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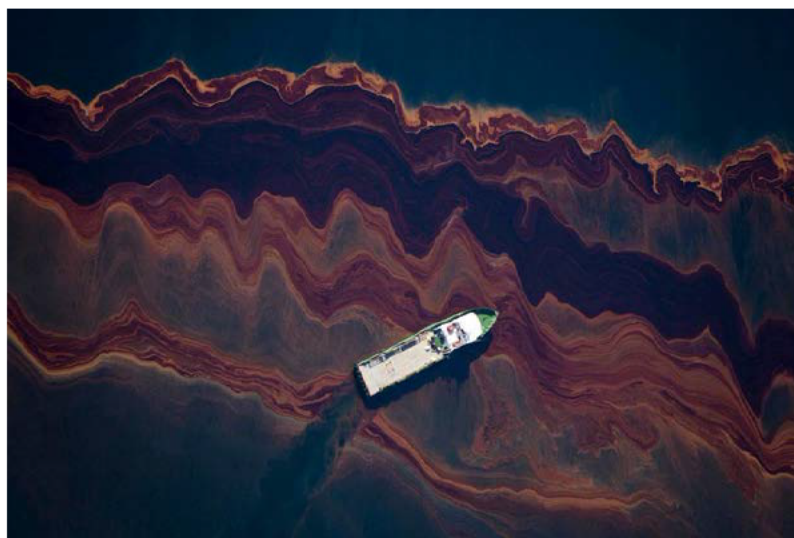
Catalyst for Improving the Environment

Hotline Report

Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill

Project No. OA-FY10-0221

May 24, 2011



DRAFT

NOT TO BE RELEASED OUTSIDE EPA

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Abbreviations

BFT	Baffled Flask Test
BP	British Petroleum P.L.C.
EPA	U.S. Environmental Protection Agency
FOSC	Federal On-Scene Coordinator
CWA	Clean Water Act
OEM	Office of Emergency Management
OIG	Office of Inspector General
ORD	Office of Research and Development
OSWER	Office of Solid Waste and Emergency Response
OPA	Oil Pollution Act
OSC	On-Scene Coordinator
NCP	National Oil and Hazardous Substances Pollution Contingency Plan, also known as the National Contingency Plan
NRT	National Response Team
RRT	Regional Response Team
SFT	Swirling Flask Test
USCG	U.S. Coast Guard

Cover photo: An overhead view of the Deepwater Horizon oil spill. (U.S. Coast Guard photo)

Hotline

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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received two Hotline complaints on the use of dispersants in response to the Deepwater Horizon oil spill in the Gulf of Mexico. We reviewed what steps EPA took to analyze the dispersant Corexit to include it on the National Contingency Plan (NCP) Product Schedule. We also determined EPA's role in the decision to use Corexit in the response. OIG's Office of Counsel addressed a perjury allegation in one complaint.

Background

The NCP establishes national response capability and coordination for oil spills. The NCP Product Schedule lists spill mitigating chemicals that responders can use in carrying out the NCP, including dispersants that emulsify, disperse, or solubilize oil into the water column.

For further information, contact our Office of Congressional, Public Affairs, and Management at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2011/YYYYMMDD-xx-x-xxxx.pdf

Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill

What We Found

EPA and the manufacturer of Corexit completed required steps to include Corexit products on the NCP Product Schedule. However, EPA has not updated the NCP since 1994 to include the most appropriate efficacy testing protocol. Subpart J of the NCP identifies requirements a manufacturer must meet to include a product on the Product Schedule, including efficacy results using the Swirling Flask Test. EPA has considered revising Subpart J to change efficacy testing procedures to the more reproducible Baffled Flask Test. However, EPA did not proceed with rulemaking before the Deepwater Horizon oil spill occurred because of competing priorities and changes in management. If EPA had updated Subpart J, more reliable efficacy data would have been readily available during the oil spill.

Responders to the Deepwater Horizon oil spill could have used other dispersants, but not within the applicable window of time designated by Addendum 2 to a directive issued by EPA and the Coast Guard. Further, EPA increased its involvement in the response by issuing Joint Directives to BP, making operational decisions, and conducting additional dispersant testing. EPA increased its involvement because (a) it was not prepared for the amount of the dispersant use, and (b) additional clarity was needed on roles and responsibilities in responding to a Spill of National Significance. EPA's increased involvement created confusion as to who at EPA led response efforts for dispersant use.

OIG's Office of Counsel did not find evidence supporting the perjury allegation.

We noted that EPA took proactive actions to make health and environmental data available on the Agency's website throughout the spill response. Also, EPA demonstrated proactive efforts to improve emergency response plans.

What We Recommend

We recommend that the Office of Solid Waste and Emergency Response establish policies to review and update contingency plans incorporating lessons learned during the Deepwater Horizon oil spill, and clarify roles and responsibilities for Spills of National Significance. We also recommend that the office take steps to revise Subpart J to incorporate the most appropriate efficacy testing protocol and capture dispersant information to better prepare for future oil spills. We recommend that the Office of Research and Development develop a research plan on long-term health and environmental effects of dispersants.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

May 24, 2011

MEMORANDUM

SUBJECT: Draft Hotline Report: Revisions Needed to National Contingency Plan
Based on Deepwater Horizon Oil Spill
Project No. OA-FY10-0221

FROM: Melissa M. Heist //s//
Assistant Inspector General for Audit

TO: Mathy Stanislaus
Assistant Administrator for Solid Waste and Emergency Response

Paul Anastas
Assistant Administrator for Research and Development

This is a draft report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This draft report is subject to revision by the OIG and, therefore, does not represent the final position of the OIG on the subjects reported. It is provided to you solely to obtain your review and comments. You are not authorized to distribute or disclose this draft or its contents, except that you may distribute it to other persons in your organization to obtain their review and comments on the subjects reported.

Action Required

We request that the Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) coordinate the responses for both itself and the Assistant Administrator for the Office of Research and Development. We appreciate the written comments that OSWER provided to us on March 29, 2011, regarding our position paper dated March 11, 2011. We made changes to this draft report as appropriate based on the comments.

In accordance with EPA Manual 2750, you are required to provide a written response to the findings and recommendations in this draft report within 30 days of the draft report date. However, because of the time taken to respond to our position paper, we request that you comment within 21 days. The response should address the factual accuracy of the draft report and indicate concurrence or nonconcurrence with each finding and proposed recommendation. The response should also indicate planned completion dates for all recommendations. If you do

not concur with a proposed recommendation, please provide any alternative actions you wish to be considered for the final report. Your response should identify any corrective actions already initiated or planned. The final report will include an assessment of your response, and we reserve the right to modify our report in light of your response. In addition to providing us with a paper copy of your response, please e-mail a Microsoft Word version to Gilbride.Patrick@epa.gov.

If you or your staff has any questions regarding this report, please contact me at (202) 566-0899 or Heist.Melissa@epa.gov, or Patrick Gilbride at (303) 312-6969 or Gilbride.Patrick@epa.gov.

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Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received two separate Hotline complaints regarding the use of dispersants in response to the Deepwater Horizon oil spill in the Gulf of Mexico. The first, received on May 16, 2010, alleged that EPA “approved” the use of Corexit although there were other less harmful substances available. The second, received July 25, 2010, alleged that EPA was covering up the effects of the dispersant being used and alluded to EPA staff lying and committing perjury. We used the following objectives to address the Hotline complaints:

- Determine what steps EPA took to analyze Corexit to include it on the National Contingency Plan Product Schedule.
- Determine EPA’s role in the decision to use Corexit over other dispersants in the Deepwater Horizon oil spill.

OIG’s Office of Counsel reviewed the perjury allegation, and appendix B summarizes the results of Counsel’s review.

Background

EPA’s Oil Response Authorities and Organization

EPA’s Office of Solid Waste and Emergency Response (OSWER) provides policy, guidance, and direction for the Agency’s emergency response and waste programs. Within OSWER, the Office of Emergency Management (OEM) works with other federal partners to prevent accidents as well as to maintain superior response capabilities. While several laws define EPA’s emergency management program, two laws guide EPA’s responsibilities for responses to oil spills:

- Federal Water Pollution Control Act (Clean Water Act, or CWA) of 1972
- Oil Pollution Act (OPA) of 1990

The CWA is the principal federal statute protecting navigable waters and adjoining shorelines from pollution. Section 311 of the CWA addresses pollution from oil and hazardous substance releases, providing EPA and the U.S. Coast Guard (USCG) the authority to establish a program for preventing, preparing for, and responding to oil spills. EPA implements CWA provisions through a variety of regulations, including the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan, or NCP).

OPA became federal law following the Exxon Valdez oil spill and expanded the federal government's ability to respond to oil spills. OPA provided new requirements for contingency planning by both government and industry. OPA also established a 13-member Interagency Coordinating Committee on Oil Pollution Research, currently chaired by the USCG. Executive Order 12777, signed in 1991, implemented OPA and delegated responsibilities under Section 311 of CWA to EPA, the U.S. Department of the Interior, and the U.S. Department of Transportation.

National Contingency Plan

The NCP serves as the federal government's blueprint for responding to oil spills and hazardous substance releases. The NCP established national response capability and overall coordination among the hierarchy of responders and contingency plans for oil spills and hazardous substance releases, including a Spill of National Significance. For discharges occurring in the coastal zone, the USCG Commandant can designate a spill as a Spill of National Significance due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the complexity of the necessary response effort. The federal government performs three fundamental activities pursuant to the NCP:

- Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant
- Notification and communications
- Response operations at the scene of a discharge or release

The NCP is a key component of the National Response System, a multi-layered response network of individuals and teams from federal, state, local, and tribal agencies, and industry. The system includes: the National Response Center, On-Scene Coordinators (OSCs), the National Response Team (NRT), and the Regional Response Teams (RRTs). The NCP designates EPA and USCG roles and responsibilities for the NRT, RRTs, and OSCs. The NRT is responsible for national response and preparedness planning, coordinating regional planning, and providing policy guidance and support to RRTs. The Director for OEM serves as EPA's representative/chair to the NRT; the USCG serves as vice-chair. RRTs are responsible for regional planning and preparedness activities, and providing advice and support to the OSC when activated during a response. The RRTs are co-chaired by EPA and USCG.

The NCP designates the USCG as the lead response agency and appoints the OSC for spills within or threatening coastal zones, whereas EPA leads and appoints the OSC for response to spills that occur in inland zones. For a Spill of National Significance, Subpart D of the NCP states that USCG and EPA can name a National Incident Commander to assume the role of OSC for spills occurring in coastal and inland zones, respectively. Subpart D also says coordination will

involve, as appropriate, the NRT, RRTs, governors of affected states, and mayors or other chief executives of local governments.

The NCP outlines requirements for contingency planning under OPA and requires the development of Regional and Area Contingency Plans to prepare for the possibility of an oil spill or hazardous substance release. Area Contingency Plans, when implemented in conjunction with other provisions of the NCP, must be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.

NCP Product Schedule

Executive Order 12777 delegated to EPA's Administrator the functions in CWA Section 311 on schedules of dispersants. Subpart J of the NCP requires EPA to prepare and maintain the Product Schedule, which OEM upholds. The schedule is a list of dispersants and other spill mitigating devices that may be used in carrying out the NCP. Dispersants are chemicals that accelerate the natural dispersion process created by energy allowing oil to mix with water. Dispersants include surfactants that break down oil into smaller droplets that are more likely to dissolve into the water column. The decision to use dispersants involves trade-offs between decreasing risks to water surface and shoreline habitats while increasing potential risks to organisms in the water column and on the sea floor.

Subpart J lists 12 data requirements that manufacturers must submit to have EPA consider including their dispersant products on the schedule. These requirements include dispersant application and storage methods, and efficacy and toxicity testing information. The requirements limit toxicity testing to acute (short-term) studies on one fish species and one shrimp species. Dispersants must demonstrate at least a 50 percent plus or minus 5 percent effectiveness on the average of two crude oils using a Swirling Flask Test (meaning the product must disperse at least 45 percent of oil in testing). Subpart J requires that laboratories conduct efficacy and toxicity testing and manufacturers submit test results from these laboratories with their product information. There are two levels of review for what manufacturers submit: an EPA contractor, and an OEM Product Schedule Manager who reviews materials and data for completeness before listing products on the schedule. EPA does not perform product testing to independently confirm test results submitted by manufacturers.

Inclusion on the Product Schedule does not mean that EPA approved the product for use. Instead, the product may be authorized for use during a spill response by the designated federal OSC.

Deepwater Horizon Oil Spill

The Deepwater Horizon mobile offshore drilling unit, owned and managed by Transocean and contracted by British Petroleum, P.L.C. (BP), began drilling

operations in January 2010. On April 20, 2010, the Deepwater Horizon unit exploded and caught fire, and on April 22 it sank. The spill lasted 87 days and spilled an estimated 4.9 million barrels of oil, making it the largest marine oil spill in U.S. history. The USCG, as designated federal OSC (FOSC) for spills occurring in the coastal zone, led the federal response to the spill. On April 29, 2010, the Secretary of the Department of Homeland Security designated the spill as a Spill of National Significance and on May 1, 2010, named a USCG Admiral (then Commandant) as National Incident Commander.

Responders first used dispersants on April 22. Responders used Corexit EC9527A and Corexit EC9500A during the response. The standing inventory of EC9527A was depleted and EC9500A became the primary dispersant used during the response. On April 30, BP suggested using dispersants subsurface at the source of the spill, a novel approach to oil spill mitigation. Responders hoped that, in addition to reducing shoreline impacts, subsurface application would result in less dispersants used overall. BP conducted three rounds of testing between April 30 and May 10 on subsurface application and a mix of federal scientists (including but not limited to EPA, USCG, and the National Oceanic and Atmospheric Administration) worked to create a monitoring protocol for subsurface dispersant use. Table 1 lists major response events, including joint actions EPA and USCG on dispersant applications (denoted in red).

Table 1: Major Events in the Deepwater Horizon Oil Spill Response

Date	Event
04/20/10	Deepwater Horizon oil drilling rig exploded.
04/29/10	Homeland Security Secretary designated the spill as a Spill of National Significance and the USCG appointed a National Incident Commander (on 05/01/10).
05/10/10	EPA and USCG issued a Joint Directive to BP requiring them to implement a monitoring and assessment plan for subsurface dispersant applications.
05/14/10	EPA and USCG issue Addendum 1 to the Directive on specific details of the monitoring plan and requiring BP to include a more thorough oil analysis that will allow EPA to determine whether the plume is toxic to aquatic life.
05/20/10	EPA and USCG issued Addendum 2 to the Directive requiring BP to identify and use a less toxic and as effective dispersant. BP responded to Addendum 2, saying Corexit was the only dispersant available in sufficiently large quantities to be useful at the time of the spill.
05/26/10	EPA and USCG issued Addendum 3 to the Directive telling BP to establish a goal to reduce dispersant application by 75 percent. The Addendum limited subsurface dispersant application to 15,000 gallons per day, and eliminated surface application altogether except for when an exemption is approved.
06/09/10	EPA Administrator approved a process for daily approval of surface dispersant applications.
06/30/10	EPA issued toxicity results on testing on eight dispersants listed on the NCP Product Schedule. EPA concluded that Corexit EC9500A was not significantly more toxic than other dispersants tested.
07/15/10	The well was capped and oil flow halted.
08/02/10	EPA issued toxicity results on the second round of testing. Results confirmed that the dispersant used in response, Corexit EC9500A, is generally no more or less toxic than other available alternatives.

Source: Information collected by OIG research based on a variety of sources.

Numerous questions have been raised on the effectiveness of dispersants, their inherent toxicity, and the toxicity of dispersed oil. EPA maintains a modest oil spill research and development program of one staff member, with limited contract staff support, and a budget between \$500,000 and \$700,000 annually over the last 10 years.

Noteworthy Achievements

In an effort to increase transparency, EPA made health and environmental data available on the Agency's website throughout the spill response and recovery operation. EPA monitored air, water, sediment, and waste generated by the cleanup operations. EPA posted environmental data, including air quality and water samples, on the Agency's website as collected, and updated postings as needed. EPA's monitoring and sampling activities provided USCG and state and local governments with information on potential impacts of the oil to the human health of residents and aquatic life along the shoreline. EPA's activities included:

- Collecting samples along the shoreline, and monitoring for chemicals related to oil and dispersants in the air, water and sediment.
- Supporting and advising USCG efforts to clean the reclaimed oil and waste from the shoreline.
- Being actively involved with new monitoring procedures for observing effects of dispersants in the subsurface environment.

OSWER demonstrated proactive efforts to improve emergency response plans. In a November 2, 2010, memorandum, the OSWER Assistant Administrator provided interim actions to RRTs in order to benefit from the experiences and knowledge gained during the Deepwater Horizon oil spill. The memorandum directed Regional Administrators to engage federal partners through the NRT to reassess dispersant use guidelines under the NCP for future oil spills. The memorandum tasked RRT representatives to work with their partners to revise Area and Regional Contingency Plans with respect to dispersant use. For example, the memorandum said plans should develop or address:

- A hierarchy of preferred oil spill response measures, including mechanical recovery (such as skimming/booming, and controlled burning), followed by dispersant use.
- Site-specific and oil-specific rationale for environmental tradeoffs and favorable dispersant use conditions, such as mixing energy, water depth, wind speed, and distance from shorelines.
- Steps to include the public and keep them informed.
- A process for longer term responses and the need for monitoring information to reassess dispersant and chemical use.

Since the Deepwater Horizon oil spill, EPA formed a workgroup, which includes OEM, to address necessary revisions to the NCP and undertook efforts to gather and apply lessons learned from the spill.

Scope and Methodology

We conducted our work from August 2010 to May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

To address our first objective, we analyzed the NCP Product Schedule and other relevant laws and regulations to determine the steps EPA takes to include a dispersant on the schedule. We reviewed information submitted by the manufacturer of Corexit EC9527A and EC9500A to get those dispersants listed on the schedule.

To address our second objective, we reviewed relevant laws and regulations that authorize the federal government's response to oil spills. We reviewed federal guidance and documents to understand established policies and procedures used throughout the response. We conducted research on dispersants, including dispersant testing protocols and stockpiles. We gathered and analyzed information and conducted interviews with OSWER, OEM, Region 6,¹ the EPA Office of Research and Development (ORD), and USCG to understand EPA's role in decision making on the use of dispersants. Appendix A provides additional information on our scope and methodology.

OIG's Office of Counsel addressed components of one hotline complaint pertaining to perjury allegations. Office of Counsel reviewed testimony by EPA officials to determine whether evidence demonstrated that perjury existed. Appendix B summarizes Office of Counsel's perjury review results.

¹ Responders activated the Region 6 RRT because the Deepwater Horizon oil spill occurred in Region 6 waters.

Chapter 2

EPA Needs to Revise Subpart J of the NCP to Include a More Appropriate Testing Procedure

EPA and the manufacturer of Corexit completed required steps to include both Corexit EC9527A and EC9500A on the NCP Product Schedule. However, EPA has not updated the NCP since 1994 to include the most appropriate efficacy testing protocol. Subpart J of the NCP identifies the requirements a manufacturer must meet for a product's inclusion on the Product Schedule. One of the 12 data requirements includes efficacy results using the Swirling Flask Test (SFT). EPA's OEM considered revising Subpart J to include changing the efficacy testing procedure to the Baffled Flask Test (BFT), but did not proceed with rulemaking before the Deepwater Horizon spill occurred because of competing priorities and changes in management. Decision makers at the time of the spill had to rely on efficacy results from the SFT, which was found to be susceptible to human error. The BFT has proved more reproducible, and if EPA had updated Subpart J to include it as the standard testing protocol, more reliable efficacy data would have been readily available at the time of the Deepwater Horizon oil spill.

EPA Could Have Used a Better Testing Procedure

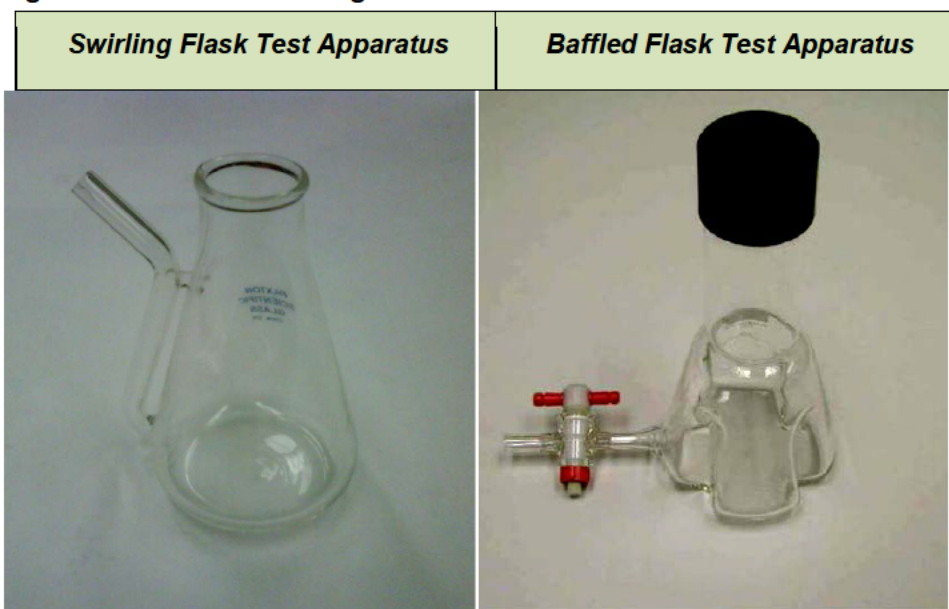
Section 311 of the CWA states that the NCP shall include a schedule identifying dispersants that may be used in carrying out the NCP and the quantities of and waters in which such dispersants may be used safely. NCP Subpart J delegates EPA the responsibility to "prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP." To include a product on the schedule, a manufacturer must submit 12 data requirements including efficacy and toxicity testing results obtained from an independent laboratory. At the time of the Deepwater Horizon oil spill, Subpart J included the SFT as the required efficacy testing procedure.

EPA's NCP Product Schedule includes as dispersants both Corexit EC9527A and EC9500A, both of which were used in the Deepwater Horizon oil spill response. EPA first listed Corexit EC9527A on March 10, 1978, and Corexit EC9500A on April 13, 1994. The Corexit manufacturer submitted all required data, including SFT results with effectiveness values demonstrating at least 50 percent, plus or minus 5 percent, on the average of two crude oils. (Corexit EC9527A efficacy results equaled 50.4 percent and Corexit EC9500A results equaled 50 percent.) There are two levels of review when manufacturers submit product information for inclusion, first by an EPA contractor, and then by EPA's Product Schedule Manager who reviews materials and data for completeness before listing products on the schedule. EPA is not required to perform product testing to confirm test results submitted by manufacturers.

Multiple EPA and outside experts have expressed concerns with the SFT. The NCP was revised in 1994 to adopt the SFT as the official efficacy laboratory testing procedure to list a dispersant on the schedule. In a 2001 report, ORD described how it discovered – soon after the 1994 revision and after the SFT’s first year of use – “unexpected large discrepancies” between the data submitted by dispersant manufacturers and those generated by EPA contract laboratories.² An ORD scientist and EPA’s lead oil spill researcher said SFT procedures are not reproducible and are susceptible to human error. Thus, EPA initiated research in 1999 to determine and correct the cause of the SFT’s poor reproducibility.

In November 2001, a group of scientists published an EPA-funded research study introducing a new testing procedure—the BFT—found more reproducible than the SFT. An ORD scientist explained that a major source of reproducibility problems with the SFT pertained to the flask design, which the new BFT design addressed. Figure 1 shows both designs. In addition, a 2005 National Academy of Sciences report suggested the BFT as a better indicator of efficacy than the SFT. The 2008–2009 biennial report for the Interagency Coordinating Committee on Oil Pollution Research noted that EPA intended for the BFT to be the new standard. A BP representative said that he does not find the SFT relevant in the field.

Figure 1: SFT and BFT Designs



Source: ORD.

Concerns with the SFT were one issue that prompted EPA to consider revising Subpart J when staff first identified issues a decade ago. While EPA had plans to replace the SFT with the BFT, the Agency did not complete revisions by the time of

² EPA’s lead oil spill researcher described this history and early concerns with the SFT in a 2010 report, *Use of the Baffled Flask Test to Determine the Dispersibility of S. Louisiana Crude Oil by Eight Oil Dispersant Products Listed on the NCP Product Schedule*, (2010), Albert D. Venosa.

the Deepwater Horizon spill in April 2010. EPA's OEM informed us it had "prepared a proposed rule to modify the efficacy test and several other test and data requirements planned for promulgation in late spring 2010. However, publication of the proposed rule was set aside..." Former Agency managers said EPA did not finalize revisions due to changes in management and competing priorities for program resources. EPA promulgated revisions to the Spill Prevention, Control, and Countermeasure rule in 2002 and, thereafter, became an Agency focus demanding staff and resources. As a result, the NCP has not been updated since 1994.

Since the spill, the EPA Administrator testified that changes are needed to the NCP's Subpart J, including dispersant registration and a more complete range of tests to address human and environmental health. EPA informed us "the available record does not suggest the dispersant used was ineffective, or that it would not have also passed the BFT." In fact, Corexit EC9500A,³ whose SFT results rank as the least effective dispersant, is the second most effective dispersant using BFT results. Table 2 lists dispersant efficacy rankings using SFT information from EPA's NCP Product Schedule Technical Notebook and BFT results from ORD's 2010 study. This recent study intended to determine how effective the eight dispersants currently available on the schedule performed on South Louisiana Crude oil at the two temperatures in the Gulf of Mexico (5°C represents temperature conditions for the deep sea dispersant injection and 25°C represents temperature conditions for surface application). Table 2 shows how results from the two testing procedures would have provided different information for decision-makers.

Table 2: Dispersant Efficacy Ranking Using SFT and BFT

Ranking of Efficacy Test Results (Most to Least Effective)			
	SFT	BFT (5°)	BFT (25°)
1	DISPERSIT SPC 1000	DISPERSIT SPC 1000	DISPERSIT SPC 1000
2	ZI-400	COREXIT EC9500A	COREXIT EC9500A
3	SAF-RON GOLD	JD-2000	JD-2000
4	JD-2000	NOKOMIS 3-F4	ZI-400
5	NOKOMIS 3-AA	NOKOMIS 3-AA	NOKOMIS 3-AA
6	NOKOMIS 3-F4	SAF-RON GOLD	SEA BRAT #4
7	SEA BRAT #4	ZI-400	NOKOMIS 3-F4
8	COREXIT EC9500A	SEA BRAT #4	SAF-RON GOLD

Source: OIG analysis of NCP Technical Notebook SFT results and ORD's report.⁴

³ Corexit EC9527A was not one of the eight dispersants tested because, as we noted in Chapter 1, the standing inventory of EC9527A was depleted and EC9500A became the primary dispersant used during the response. We did not have BFT results for Corexit EC9527A and could not include it in our analysis.

⁴ There were differences in testing protocol between the SFT conducted for the schedule and this study; therefore, we limited comparability of information to ranking efficacy test results.

Conclusion

When the Deepwater Horizon oil spill occurred in April 2010, EPA used dispersant efficacy data on the Production Schedule that were based on the SFT. If EPA had updated Subpart J to include the BFT as the standard testing protocol, more reliable efficacy data would have been readily available at the time of the spill.

Recommendation

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Develop appropriate NCP Subpart J testing revisions, including proceeding with plans in place before the Deepwater Horizon oil spill, to incorporate the most appropriate efficacy testing protocol. Develop an action plan with milestones for these and any other necessary revisions and take steps to propose NCP Subpart J revisions.

Chapter 3

EPA Increased Its Involvement During Deepwater Horizon Oil Spill

We found that responders to the Deepwater Horizon oil spill could have used other dispersants in the response, but not within the window of time afforded by Addendum 2 to the pertinent Joint Directive. [REDACTED]

[REDACTED] Prior to a spill occurring in deep waters, EPA is one of several agencies responsible for contingency planning, including worst case discharges, and for listing products on the NCP Product Schedule. During an actual spill response, EPA has responsibilities on the NRT and on RRTs. We identified two main reasons why EPA increased its involvement during the spill:

- EPA was not prepared for the amount and length of dispersant use.
- EPA and others needed additional clarity on roles and responsibilities for a response to a Spill of National Significance.

Other Dispersants Could Have Been Used But Not in the Time Afforded by the Joint Directive

The first hotline we received alleged that EPA approved the use of Corexit when other, less harmful substances could have been used. Dispersants EPA lists on the NCP Product Schedule “may be authorized for use” by the designated FOSC. Subpart J of the NCP requires RRTs to address the desirability of using dispersants as a part of their planning activities. Regional and Area Contingency Plans must include, as appropriate, pre-authorization plans that address the specific contexts in which to use such products. The Region 6 RRT granted pre-authorization to the FOSC for dispersant use as defined by the *RRT 6 FOSC Dispersant Pre-approval Guidelines and Checklist*. The plan says, “The only requirement for dispersant product selection is that the dispersant must be included on the NCP Product Schedule and considered appropriate by the FOSC for existing environmental and physical conditions.”

As the FOSC, USCG approved BP’s request to use Corexit EC9527A, followed by Corexit EC9500A, in the response. On May 20, 2010, EPA and USCG issued Addendum 2 to the Joint Directive they had issued to BP. The addendum required BP to identify and use one or more approved dispersants from the Product Schedule that were available in sufficient quantities and were less toxic and as effective as Corexit EC9500A. In addition, Addendum 2 required BP to respond

to EPA within 24 hours and use the alternate dispersant identified within 96 hours of the Addendum's issuance and after receiving EPA's approval.

BP responded that no other dispersants that met the acute toxicity and effectiveness criteria in Addendum 2 were available in sufficient quantities to be useful at the time of the spill. According to manufacturers we spoke with, BP contacted a number of them to determine production capacities and inventories available. All manufacturers indicated to BP that they could meet the production requirements but needed 3 to 10 days to ramp up production. BP maintained that Corexit EC9500A remained the best dispersant option. Dissatisfied with BP's response, EPA contacted manufacturers to verify production capacity and conducted its own toxicity testing on eight dispersants.

BP chose the Corexit product as the dispersant to use due to prevalence and national and international stockpiles at the time of the response. In addition, BP's Gulf of Mexico Regional Oil Spill Plan listed the Corexit dispersants in over 99 percent of dispersants inventoried. EPA and USCG interviewees said Corexit has been tested many times, is well known, and responders are comfortable with using it in a spill response.

EPA and USCG issued Addendum 2 due to the volume of dispersants used and because EPA said it received public concerns to use a less toxic dispersant. In testimony before the House Energy and Commerce Subcommittee on Energy and the Environment, Administrator Lisa P. Jackson said EPA will continue to push BP to switch to less toxic alternatives due to the volumes of the dispersants being used and the lengthening period of this crisis. EPA staff said the Agency conducted its own toxicity testing on available dispersants to ensure that it based decisions about ongoing dispersant use on the best available science. EPA staff said its tests were consistent with those required by Subpart J but were conducted by one laboratory for comparability of results. EPA said it did this rather than rely solely on test data provided by the Product Schedule with test results conducted at different times by different laboratories. Additionally, EPA staff said its tests used Louisiana Sweet Crude Oil rather than #2 Fuel Oil (stipulated in the NCP) to increase applicability of results to the Gulf situation. Finally, OEM's Regulation and Policy Development Director said its tests also addressed BP's potential endocrine disruptor concern.

During the spill, EPA used staff resources to obtain more information than was available on the NCP Product Schedule. EPA's toxicity testing results, issued on June 30, 2010, verified that results were consistent with the schedule, and indicated that none of the eight dispersants tested displayed biologically significant endocrine disrupting activity. EPA's testing results did not affect which dispersant responders used; Corexit was the only dispersant used in the response. Responders could have used other dispersants, but manufacturers would have needed more time to ramp up their production than the window of time afforded by Addendum 2. Three of the five dispersant manufacturers contacted believed they wasted their time in

responding to various requests for information, that responders never really considered their products, and that responders did not capture their production capabilities.

EPA Was Not Prepared for Quantity and Duration of Dispersant Use

Contingency plans we reviewed were out of date at the time of the Deepwater Horizon oil spill and were not updated to reflect deepwater drilling trends, lessons learned from a 2002 Spill of National Significance exercises, and past major oil spills. The OPA improved the nation's ability to prevent and respond to oil spills and provided requirements for contingency planning. The NCP further outlines these requirements and states that Contingency Plans shall be adequate to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge. However, there is no specific requirement to update contingency plans under the NCP or OPA. Improved contingency planning using available information could have better prepared EPA to support USCG's response to the spill.

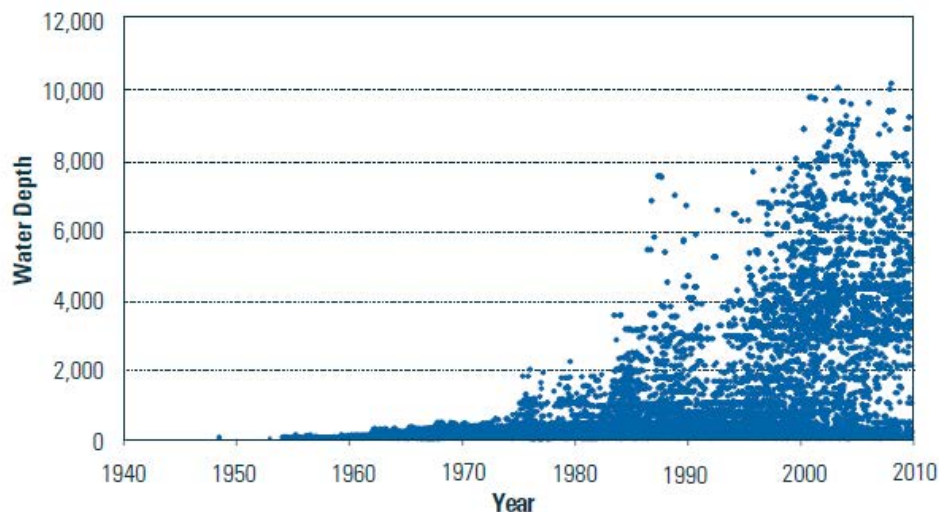
Various documents address contingency planning:

- OPA established provisions that expanded the federal government's responsibility and resources to respond to oil spills. OPA provided new requirements for contingency planning by both government and industry.
- The NCP outlines requirements for Regional and Area Contingency Plans:
 - Subpart C requires each designated area to develop a plan adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.
 - Subpart J states that RRTs and Area Committees should address the desirability of using various products on the NCP Product Schedule based on certain environmental conditions. Plans should include applicable pre-authorization plans that address the specific contexts in which to use such products.
- The Region 6 RRT Regional Integrated Contingency Plan calls for continuous reviews on the effectiveness and integration of all plans based on actual response experiences, exercises, and other relevant information (including the spill history of an area) that will lead to enhanced plans.

Region 6 RRT contingency plans were outdated at the time of the Deepwater Horizon oil spill. The Region 6 RRT completed an interim update to non-dispersant sections in the Regional Integrated Contingency Plan on May 20, 2010, subsequent to the explosion that caused the Deepwater Horizon oil spill. The *RRT-6 FOSC Dispersant Pre-approval Guidelines and Checklist* was last updated in 2001. One EPA official described plan revisions as a very detailed and complicated process, but said a catastrophic event would trigger updates to plans. Plans were not updated to address the following events:

- A dramatic expansion of deepwater drilling in the Gulf of Mexico. Oil production in the Gulf grew from 275 million barrels in 1990, where 4.4 percent came from deepwater wells, to 567 million barrels in 2009, where deepwater wells yielded more than 80 percent of the total. In addition, from 2001 to 2004, 11 major oil fields were discovered in water depths of 7,000 feet or more. Figure 2 shows the increase in water depth of wells drilled in the Gulf from 1940 to 2010.
- Lessons learned from Spill of National Significance exercises in 2002 stating that pre-authorization plans should address potential shortfalls of dispersant supplies and equipment.
- Hurricanes Katrina and Rita in 2004 and 2005, which collectively destroyed 113 oil platforms, 70 vessels, and nearly 130 oil and natural gas pipelines, and ravaged the Gulf Coast with major impacts to offshore infrastructure and operations.

Figure 2: Depth of Wells in the Gulf of Mexico – 1940 to 2010



Source: National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Final Report (January 2011), based on data from the Bureau of Ocean Energy Management, Regulation, and Enforcement within the Department of the Interior.



The Ixtoc I oil spill. (Photo from National Oceanic and Atmospheric Administration)

Further, contingency plans were not updated based on other historical spills. The 2010 Region 6 RRT Regional Integrated Contingency Plan defines a major discharge as greater than 100,000 gallons in coastal waters. The Ixtoc I spill in the Gulf of Mexico in 1979 released 3.3 million barrels of oil and lasted over 10 months. The Region 6 RRT could have used knowledge gained from this spill to update its Regional Integrated Contingency Plan to better address worst-case discharges and spill duration. In addition, ORD's Assistant Administrator said ORD would have liked to have more data and insight from the Ixtoc I spill to build into decision making for future spills.

During the Deepwater Horizon oil spill, a number of concerns were not addressed in contingency plans, especially with regard to dispersants. For example, one EPA Director described the novel approach of applying dispersants subsurface as “somewhat trial and error.” Concerns included questions on the potential impact of the volume of dispersants applied, effectiveness of dispersants at such low temperatures, oil weathering as it rose to the surface, and environmental effects of the deep sea. The Region 6 RRT Regional Integrated Contingency Plan itself lists one of the disadvantages of dispersants as “lots of unknowns.”

The Region 6 RRT did not update its plans because there is no requirement to do so. Even though the Region 6 RRT Regional Integrated Contingency Plan calls for the RRT to continuously review the effectiveness of plans, the NCP and OPA do not require plans to be reviewed and updated. Response plans contained boilerplate language taken from the NCP with slight variation based on local geography. For example, the section on Chemical Countermeasures in the Region 6 RRT Regional Integrated Contingency Plan essentially repeats the information in Subpart J of the NCP. The plan does not address Region 6 RRT specific issues such as logistical boundaries where dispersants may not be used or discussion of the pre-authorization plan.

An EPA Region 6 Division Director said he did not believe EPA could have anticipated a spill of this magnitude. However, more detailed and updated contingency planning using available information could have better prepared EPA and others to respond to the spill. Future planning should consider the Deepwater Horizon scenario and address worst case discharges, lessons learned from Spill of National Significance exercises, and industry trends. OEM staff said the RRT is working to revisit the conditions associated with dispersants under the pre-authorization plans. Additionally, on November 2, 2010, OSWER’s Assistant Administrator provided interim actions to RRTs to address issues raised during the Deepwater Horizon oil spill. The interim actions call for Area and Regional Contingency Plans to consider various conditions and limitations to dispersants. The interim actions said plans should consider site-specific and oil-specific rationale for environmental tradeoffs and favorable dispersant use conditions, as well a process for longer-term responses and the need for monitoring information to reassess dispersant use.

Additional Clarity Needed on Roles and Responsibilities for Responses to Spills of National Significance

Additional guidance is needed on the roles and responsibilities for responding to a Spill of National Significance. As the first Spill of National Significance in the United States, and due to the unprecedented nature of the spill, EPA increased its involvement during the Deepwater Horizon response. EPA helped make the decision to use dispersants subsurface, issued a Joint Directive and Addenda with USCG to BP, and became involved in daily operational dispersant decisions. The

NCP and the National Response Framework allow the response structure to adjust to include senior Agency officials, especially when responding to a Spill of National Significance. However, the NCP does not provide guidance on the roles and responsibilities of the National Incident Commander and other high-level officials. As a result, involvement by senior EPA officials created confusion as to who made dispersant decisions.

Under the NCP, for spills occurring in coastal zones, EPA is not given any decision-making authority, but EPA is responsible for planning prior to a spill and supporting the USCG during a response. The NCP states that for a Spill of National Significance in the coastal zone, USCG may name a National Incident Commander who assumes the role of the OSC in communicating with affected parties and coordinating resources at the national level. The NCP further states that coordination will involve the NRT, RRTs, and others as appropriate. However, the NCP does not address how high level officials other than the National Incident Commander can and should participate in such a response.

Responders encountered a number of unique circumstances in the Deepwater Horizon oil spill, such as the spill lasting 87 days and using close to 2 million of gallons of dispersants. Through its role as NRT chair, EPA became involved in the decision to use dispersants subsurface at the request of the USCG FOSC. Subsurface application was a novel approach to oil spill mitigation and there was limited knowledge on the effects of applying dispersants a mile below the surface. EPA and USCG issued a Joint Directive and Addendum 1 to BP outlining a subsurface dispersant monitoring plan. EPA had never issued a joint directive with USCG before and this action allowed the Agency to become more involved in the spill response as EPA and USCG held BP accountable for following the Directive.



At left is an example of surface dispersant application (USCG photo); at right is an example of a subsurface dispersant application (image taken from Macondo video feed – photograph republished from MSNBC/AP with permission from BP).

On May 26, 2010, EPA and USCG issued Addendum 3 to the Directive and required BP to limit the use of dispersants subsurface to 15,000 gallons per day and eliminate surface application except when granted exemption. It was unclear in our review what responders based the 15,000-gallon limit upon, but the Addendum sought to limit dispersant use and require more documentation

because of concerns about ongoing dispersant applications at such large volumes. Given unknowns on the long-term health and environmental effects of dispersants, EPA wanted to use the least amount possible to be effective. Because of the Deepwater Horizon oil spill, Congress appropriated \$2.0 million to EPA to support research on the short- and long-term environmental and public health implications associated with the spill and surface/subsurface dispersant applications. ORD plans to further its research efforts to include innovative and expansive approaches to spill remediation.

Rather than EPA's involvement occurring through the RRT and NRT as would happen in a typical response under the NCP, senior EPA officials became involved in daily surface dispersant decisions. The Agency was concerned about the precedent-setting amount of dispersants used and the number of exemptions USCG granted with minimal justification. On June 9, 2010, EPA developed a hierarchy of decision-making intended to give staff-level EPA RRT representatives on the ground some authority for daily decision making on surface exemptions. However, internal communications indicated that senior Agency officials made decisions on surface applications. Key staff in Region 6, including EPA's representative to the Region 6 RRT and staff involved in the response, said they did not have the authority to approve dispersant applications. One described the process as "very political" and said "operational control was taken away from the region." As a result, EPA's additional involvement in daily surface application decisions created confusion as to who in the Agency made decisions.



EPA Administrator Jackson during one Gulf trip.
(Photo from www.RestoreTheGulf.gov).

EPA's Administrator increased her involvement, as well as that of other senior Agency officials, due to the novel approach of applying dispersants subsurface, the size and nature of the spill, the volume of dispersants used, and political interest.⁵ In our interview with Administrator Jackson, she said, "As good as our field staff is I was not going to have the response progress without a senior set of eyes... especially when you have the White House involved..." Additionally, in her testimony on July 15, 2010, the Administrator said, "I think a unified command makes sense for smaller spills, but on something like this, there needs to be additional clarity."

The concurrence process in place for surface dispersant application inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator

⁵ A number of EPA officials testified before Congress. Throughout the spill and after the well was capped, the EPA Administrator testified four times, the Deputy Administrator testified once, and ORD officials testified four times. In addition, EPA participated in hearings before the National Commission on the BP Deepwater Horizon Oil Spill. Political officials asked EPA questions on its roles and responsibilities in an oil spill response and the health and environmental effects of dispersants.

and, at times, to the Administrator. EPA senior officials believe their involvement in the decision to apply dispersants subsurface reduced the total amount of dispersants applied overall (subsurface and surface). EPA officials also believe subsurface dispersant application was effective. However, as the President's Commission Report noted, due to insufficient guidance on roles and responsibilities for a Spill of National Significance, an additional protocol is needed that accounts for participation by high-level officials. OSWER agrees that the NCP needs additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

Conclusion

[REDACTED] EPA did not plan adequately and was not prepared for a spill of this significance, including the use of dispersants at such large quantities over a long period. EPA's increased involvement in operational decisions created confusion within and outside the Agency. EPA could better respond to future significant spills by enhancing planning efforts to address unknowns encountered in the Deepwater Horizon response and by clarifying roles and responsibilities of senior Agency officials.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

2. Have the OEM Director work through the office's NRT capacity to establish a policy that calls for periodic reviews and updates to contingency plans, after considering lessons learned from major national and international oil spills, and/or based on area trends in oil drilling.
3. Modify the NCP Product Schedule and contingency plans to include additional information (such as testing on crude oil, subsurface dispersants application, volume and duration limits, etc.) learned from the Deepwater Horizon oil spill response and use such information to revise and update Area and Regional Contingency Plans.
4. Develop policies/procedures for subsurface dispersant application and modify pre-authorization plans to address subsurface use.
5. Develop guidance for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the NCP and work with federal partners to develop guidance or standard operating procedures to include more detail on how to respond to a Spill of National Significance.

6. Review and analyze NCP Subpart J toxicity testing protocols to ensure that emergency responders have the information necessary for appropriate subsurface dispersant use for future oil spills.
7. As part of the action to review NCP Subpart J requirements, capture and maintain dispersant manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.

We recommend that the Assistant Administrator for Research and Development:

8. Develop a research plan to address gaps on long-term health and environmental effects of dispersants.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	10	Develop appropriate NCP Subpart J testing revisions, including proceeding with plans in place before the Deepwater Horizon oil spill, to incorporate the most appropriate efficacy testing protocol. Develop an action plan with milestones for these and any other necessary revisions and take steps to propose NCP Subpart J revisions.		Assistant Administrator for Solid Waste and Emergency Response			
2	18	Have the OEM Director work through the office's NRT capacity to establish a policy that calls for periodic reviews and updates to contingency plans, after considering lessons learned from major national and international oil spills, and/or based on area trends in oil drilling.		Assistant Administrator for Solid Waste and Emergency Response			
3	18	Modify the NCP Product Schedule and contingency plans to include additional information (such as testing on crude oil, subsurface dispersants application, volume and duration limits, etc.) learned from the Deepwater Horizon oil spill response and use such information to revise and update Area and Regional Contingency Plans.		Assistant Administrator for Solid Waste and Emergency Response			
4	18	Develop policies/procedures for subsurface dispersant application and modify pre-authorization plans to address subsurface use.		Assistant Administrator for Solid Waste and Emergency Response			
5	18	Develop guidance for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the NCP and work with federal partners to develop guidance or standard operating procedures to include more detail on how to respond to a Spill of National Significance.		Assistant Administrator for Solid Waste and Emergency Response			
6	19	Review and analyze NCP Subpart J toxicity testing protocols to ensure that emergency responders have the information necessary for appropriate subsurface dispersant use for future oil spills.		Assistant Administrator for Solid Waste and Emergency Response			
7	19	As part of the action to review NCP Subpart J requirements, capture and maintain dispersant manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.		Assistant Administrator for Solid Waste and Emergency Response			
8	19	Develop a research plan to address gaps on long-term health and environmental effects of dispersants.		Assistant Administrator for Research and Development			

¹ O = recommendation is open with agreed-to corrective actions pending

C = recommendation is closed with all agreed-to actions completed

U = recommendation is undecided with resolution efforts in progress

Appendix A***Details on Scope and Methodology***

We conducted our review to address two hotline complaints on use of dispersants in the Deepwater Horizon oil spill. We sought to determine what steps EPA took to analyze the dispersant Corexit to include it on the NCP Product Schedule, as well as EPA's role in the decision to use Corexit over other dispersants. To address both objectives, we reviewed and summarized relevant laws, regulations, and guidance on oil spill response, including the NCP, OPA, CWA, and Executive Order 12777. We reviewed activities by several EPA offices, including OSWER, OEM, ORD, Region 6, and the Administrator's Office. We also interviewed key USCG officials given that USCG served as the lead response agency.

To address our first objective we:

- Analyzed the NCP Product Schedule and reviewed information submitted by the manufacturer of Corexit to get listed on the schedule.
- Interviewed current and former Product Schedule Managers in OEM to determine the process of including a product on the Product Schedule.
- Interviewed an EPA contractor about its role supporting OEM in reviewing submissions for the NCP Product Schedule, including the contractor's analysis of manufacturer-submitted requirements and staff qualifications.
- Reviewed proposed revisions EPA planned for Subpart J of the NCP before the Deepwater Horizon oil spill occurred and met with OSWER and OEM officials to discuss necessary revisions to Subpart J as a result of the spill.
- Interviewed former OEM Regulation and Policy Development Division Directors to understand why revisions to Subpart J of the NCP were not finalized before the Deepwater Horizon spill.
- Interviewed an ORD dispersant expert to gain an understanding of dispersants and efficacy testing protocols, including the SFT and BFT.

To address our second objective we:

- Documented the timeline of events of the Deepwater Horizon oil spill to understand the sequence of events and highlight EPA's activities.
- Reviewed contingency plans from the Region 6 RRT as well as BP's *Gulf of Mexico Regional Oil Spill Response Plan* to understand the level of preparation plans provided during the response as well as the organizational structure underlying the response.
- Reviewed congressional testimony from EPA's Administrator, Deputy Administrator, Assistant Administrator for ORD, and an ORD Division Director.
- To understand EPA's involvement throughout the response, including decision making on dispersants, interviewed:
 - The Administrator
 - Deputy Administrator
 - Assistant Administrators for OSWER and ORD

- Acting Director and other key staff within OEM
- The Director of the Superfund Division and key staff in Region 6, including EPA's representative to the Region 6 RRT and staff involved in the response.
- To understand the role of EPA versus that of the USCG, interviewed the Admiral appointed as National Incident Commander, FOSCs who served during the 87-day response, and USCG's deputy area commander and representative to the Region 6 RRT. We also reviewed e-mails and other documentation provided by USCG.
- Reviewed documentation, meeting notes, and e-mails from Region 6, OSWER, and ORD, including the Joint Directive and Addenda from EPA and USCG, to understand the flow of communication regarding the surface and subsurface use of dispersants.
- Attended a National Science Foundation Dispersant Workshop and a Clean Gulf Conference to gain insight into the oil spill response industry and the role that dispersants have during a response.
- Conducted research on dispersants, including dispersant testing protocols and stockpiles.
- Interviewed dispersant manufacturers to determine availability and production capacity of their products and whether responders considered their products during the spill.

In May 2010, President Obama established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling through Executive Order 13543. The Commission examined the relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion, fire, and spill and options to mitigate the impact of future spills. We reviewed staff working papers and the final report, issued to the President in January 2011, to assess the Commission's review and relevance on our two objectives.

OIG's Office of Counsel addressed components of the Hotline complaint alleging that the EPA Administrator and employees committed perjury. Office of Counsel reviewed all testimony by EPA officials to determine whether evidence demonstrated that perjury existed. Appendix B summarizes Office of Counsel's perjury review results.

Appendix B

Allegation of Perjury by Senior EPA Officials in Congressional Testimony

The OIG Office of Counsel did not find evidence supporting the perjury allegation. None of the testimony reviewed demonstrated any evidence that tended to indicate that senior EPA officials committed perjury. Because of this finding, the Office of Counsel did not make any recommendations to EPA on allegations of perjury raised in the Hotline complaint.

We received a Hotline complaint on July 25, 2010, asserting, among other matters, that EPA was covering up the effects of the Corexit dispersant. The hotline referred to claims by an EPA employee that Administrator Jackson perjured herself in testimony before Senator Mikulski on July 15, 2010, by making false statements that Gulf air and water are safe. Our Office of Counsel reviewed allegations concerning perjury and did not address the cover-up allegation. In its response to our draft report, the Agency denied any cover-up and said that it took aggressive steps to affirmatively disclose data regarding dispersant use. We noted the Agency's response on this point in Chapter 1 of our report under *Noteworthy Achievements*.

Even though the perjury allegation only identified testimony given by the Administrator on July 15, 2010, our Office of Counsel reviewed all testimony provided to Congress by senior EPA officials during the response. Office of Counsel reviewed testimony to determine whether any evidence tending to demonstrate perjury existed. To determine whether any such evidence of perjury existed, Office of Counsel relied on the legal definition of perjury and the following three required elements of a perjury offense:

1. The first element is that the party must be under oath during their testimony, declaration, or certification.
2. The second element is that the party must have made a false statement.
3. The third element is proof of specific intent, that is, that the party made the false statement with knowledge of its falsity, rather than because of confusion, mistake or faulty memory. The false statement must be material to the proceedings. A false statement is material if it has "a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it was addressed."

Our Office of Counsel reviewed nine sworn statements (including that given by the Administrator on July 15, 2010) and related responses to "Questions for the Record" by EPA officials.



Office of Inspector General

Administration Workpaper

Prepared by Todd Goldman 07/12/2011

Assignment: 2010 - 1371 - OA-FY10-0221 - Dispersant Approval

Area: 538

Goal: Clean and Safe Water

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 08/12/2010 through 08/12/2011

Section: E

Assignment Guide Name: Reporting

Origination Doclink: [REDACTED]

Subject: 07/12/11 Exit Briefing on Agency's Draft Report Comments

Subsection: E.011.01

Evidence Type(s): <input checked="" type="checkbox"/> - Documentary <input type="checkbox"/> - Analytical <input type="checkbox"/> - Observational <input type="checkbox"/> - Testimonial <input type="checkbox"/> - N/A		
<input type="checkbox"/> - PR <input type="checkbox"/> - FW <input checked="" type="checkbox"/> - Reporting	Event Date:	WP Milestone Date - 7 days for doc. reviews and interviews:
Project Guide Step Number: E.011.01	7/12/11	07/19/11
Event Description: Exit Briefing on Agency Comments to Draft OIG Dispersants Report		
** If appropriate, provide a description or cause for WP completion delay(s):		
NAME	DATE	COMMENTS
WP Prepared By: Todd Goldman	7/13/2011	
WP Completed By: Todd Goldman	7/13/2011 and 08/02/11	
WP Reviewed By: Erin Barnes-Weaver	08/03/11	<input type="checkbox"/> - I reviewed this WP and found it satisfactory. No comments. <input type="checkbox"/> - I reviewed this WP and found it satisfactory and provided comments in red font. <input type="checkbox"/> - I conducted a first review and provided reviewer notes in the table below.
WP Reviewed By:		
WP Peer Edited By:		

Purpose: To summarize and document our meeting with OSWER, ORD, and Region 6 on Agency Comments to Draft OIG Dispersant Report July 12, 2011.

Attendees: OSWER:
 Dana Tulis, Acting Director, OEM
 Craig Matthiessen, Director, Regulation & Policy Development Division, OEM

ORD:
 Peter Evanko (delegated by Norman Adkins)

Region 6:
 Sam Coleman, Division Director
 Susan Jenkins, Audit Liaison

OIG:
 John T. Walsh DAIG
 Patrick Gilbride, PLD
 Erin Barnes-Weaver, Project Manager

MaryAnn Strasser, Auditor
Stephanie Wake, Program Analyst
Todd Goldman, Auditor

Date/Time: Tuesday, July 12, 2011, 4PM/EST (2PM/MST), via video conference

Scope: This addresses step E.011.01 of our audit guide.

Conclusion:

We had a meeting on 07/12/11 with OSWER, ORD and Region 6 to discuss EPA's comments on the Official Draft Report we issued to them on 05/24/11 (see WP E.010 ■). The original response date was requested to be 6/14/11. Several extensions were requested and granted. (see WP E.011 ■). On June 30 we received separate responses from OSWER and ORD. We recognizes that ORD agreed with our recommendation in Chapter 3 and indicated that they had already begun to address it. While OSWER sent a lengthy response, it had more to do with the language of the report. In general they agreed with most of our recommendations. They had issues with recommendations 5 and 7. These were discussed during the meeting and a general consensus was reached. We relayed that we had reviewed their comments and incorporated changes where we felt it was appropriate. OSWER still had concerns that their comments were not entirely accepted into the final version of the official report. We agreed to send them our formal disposition (attached at bottom of page), prepared in response to their comments. It was agreed that they would have until the end of the business day on Thursday to review and respond to the disposition document. We reiterated that the report was our product and we would have the final say in any additional edits.

Summary:

Meeting Invitation to Discuss Agency Comments
Meeting Invitation to Discuss Agency Comments

Exit Briefing on Agency Comments to Draft OIG Dispersants Report



Tue 07/12/2011 2:00 PM - 3:00 PM

Attendance is for Todd Goldman

Chair: **Erin Barnes-Weaver/IG/R8/USEPA/US**

No Location Information

Required:

Craig Matthiessen/DC/USEPA/US@EPA, Dana Tulis/DC/USEPA/US@EPA, MaryAnne Strasser/IG/R8/USEPA/US@EPA, Patrick Gilbride/IG/R8/USEPA/US@EPA, Sam Coleman/R6/USEPA/US@EPA, Stephanie Wake/IG/R8/USEPA/US@EPA, Todd Goldman/IG/R8/USEPA/US@EPA

Optional:

Barry Breen/DC/USEPA/US@EPA, Cynthia Sonich-Mullin/CI/USEPA/US@EPA, Deborah Heckman/DC/USEPA/US@EPA, Johnsie Webster/DC/USEPA/US@EPA, JohnT Walsh/OIG/USEPA/US@EPA, Jorge Rangel/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Melissa Heist/OIG/USEPA/US@EPA, Norman Adkins/RTP/USEPA/US@EPA, Paul Anastas/DC/USEPA/US@EPA, Susan Jenkins/R6/USEPA/US@EPA

Description

Please attend this "exit briefing" to discuss the Agency's response to our official draft report on the use of dispersants in the Gulf oil spill. Our discussion will take place on **Tuesday, July 12, at 4:00 PM/ET via video conference**. DC attendees may participate via Room 2340 EPA-West for DC attendees, and Region 6 attendees may participate via the OIG conference room in Dallas on the 9th floor. I will send VTC and audio connection information in a separate email. Please contact me via email or at 303-312-6871 if you would like to add invitees.

We look forward to our discussion.

Personal Notes

Pat Gilbride led introductions.

PG: We appreciate comments from ORD and OSWER. Lets begin with ORD, who agreed with the recommendation (Chapter 3, Recommendation 8). When can we expect a corrective action plan (CAP)? Would it be soon or will you wait for 90 days after the final response?

ORD's PE: I sense they will wait for 90 days but I will follow up.

Recommendation 5

PG: Lets start with recommendation 5 were OSWER had comments.

DT: We had revised the recommendation.

EBW: Elaborated on changes to the recommendation.

DT: We had lost some of the points of her comments. They had no plan to develop guidance because responses are site specific and it does not make sense to have one response. The incident would dictate how to integrate senior, national and regional responders in a SONS.

PG : So the actual response scenario would dictate the response appropriate actions?

DT: Yes

SC: I concur, agency guidance would be extremely problematic because of the unique nature and scope of these events; guidance would be misleading.

CM: For the 2nd part, the framework is already there (NCP). Revising it because of this incident does not add value.

DT: That is why we revised the 2nd part of the recommendation. There are issues with the NCP; too much detail on a SONS would tie the hands of the responders. Currently the NRT and RRT are reviewing the lessons learned.

EBW: Can the roles and the responsibilities of senior agency officials be defined through training and exercises?

DT: A separate group thru FEMA / Coast Guard are reviewing the NCP. This might be sent on. It is a whole process; it doesn't preclude us from doing it; [REDACTED].

MAS: We are not the first group to say this. (Need additional guidance to define roles and responsibilities of senior officials, NRT and RRT during a SONS event).

DT: The NCP is not the place to address it....

MAS: Through training and exercises?

DT: NRT is writing up detailed guidance in its lessons learned. This document by the NRT and other documents will be considered.

CM: Lets delete "to include more detail"

PG: Does that work for everyone?

General response: Yes.

Recommendation 5 is now proposed to state:

5. Develop training for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the response and work with federal partners to address lessons learned, including reviewing the NCP on how to respond to a Spill of National Significance.

Recommendation 7

PG: Clarified with OSWER, that we are not proposing changes to recommendation 7, however we will note what you say.

CM: Manufactures and responders, not the EPA should be responsible for tracking production capabilities.

EBW: Do you have suggestions for a revision?

DT: Rule changes would require asking for comments on Subpart J. It is a regulatory process.

SW: What if manufactures do not want to provide production capacity.

CM: [REDACTED]. The reporting of capacity is important for FOSC; and responsible parties (BP needed it), not EPA; this information does not need to be housed at EPA, rather it should be collected and maintained by Response Planners.

EBW: We will e-mail you a revised recommendation

The revised recommendation 7 is now:

7. As part of the action to review NCP Subpart J requirements, ensure that the proposed rule asks for comments on the manufacturer maintaining dispersant production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. When promulgating the final rule, work with federal partners and manufacturers to make this information widely available to the response community.

Disposition to Comments

PG: The two main points we wanted to address were: The Coast Guard was the lead and we did not mean to imply that the agencies response was inadequate. This should give you a sense of the changes we have made.

EBW: We have reviewed your comments and have made an effort to incorporate them in the report. However, we do not want to slow down the process. (by having them review the changes)

DT: How does the process go?

PG: Your responses will be added as Appendixes. The report has been change to address your comments.

EBW: We can share a copy of the report with the changes highlighted and a copy of the dispersion document.

DT: Ok We would also like to get you a new version of our memo. I will check with OSWER but some words were left off the memo, it needs to be updated on page 1 with Barry's clarification.

PG: We will send you the revised recommendations 5 and 7 and our Disposition document with the understanding that any comments will be received back by COB Thursdays 7/14. After COB we intend to push report forward.

DT: We appreciate the chance to follow up and the lengths you have gone to accommodate us.

PG: Thanked everyone and concluded the meeting.

Revised Recommendations Language and Draft OIG Disposition Document E-mail
Revised Recommendations Language and Draft OIG Disposition Document E-mail

One page of workpaper
E.011.01 is withheld as
non-responsive to the FOIA
request.

26 pages of workpaper
E.011.04 are withheld as non-
responsive to the FOIA request.

Re: OIG Dispersant report - IBM Lotus Notes

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Re: OIG Dispersant report

Dana Tulis to: Patrick Gilbride

Cc: Erin Barnes-Weaver, Mathy Stanislaus

From: Dana Tulis/DC/USEPA/US

To: Patrick Gilbride/IG/R8/USEPA/US@EPA

Cc: Erin Barnes-Weaver/IG/R8/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA

History: This message has been replied to and forwarded.

Thanks, [REDACTED] com

[REDACTED] and all the citations we provided, basically noted th

Dana S. Tulis
Deputy Office Director
Office of Emergency Management
Environmental Protection Agency
202-564-8600

Patrick Gilbride

Hi Mathy/Dana - Attached below are the changes m

From: Patrick Gilbride/IG/R8/USEPA/US
To: Mathy Stanislaus/DC/USEPA/US@EPA, Dana Tulis/DC/USEPA/US@EPA
Cc: Erin Barnes-Weaver/IG/R8/USEPA/US@EPA
Date: 08/15/2011 10:47 PM
Subject: OIG Dispersant report

Hi Mathy/Dana - Attached below are the changes made to the report based upon your comments. Please let me know

Thanks
Pat

Chapter 3 First Paragraph (report page 11)

We found that responders to the Deepwater Horizon oil spill could have used other dispersants in th
maintains delegated authority, we found that EPA increased its involvement in the spill response bey

WITH THE NCP IN CONCURRING WITH THE USGC FOSC'S DECISIONS. WE FOUND application. Prior to a spill occurring in deep waters, EPA is one of several agencies responsible for response, EPA has responsibilities on the NRT and on RRTs. We identified two main reasons why

- EPA was not prepared for the unprecedented amount and length of onshore dispersant u



Re: OIG Dispersant r...



Todd Goldman [starte...

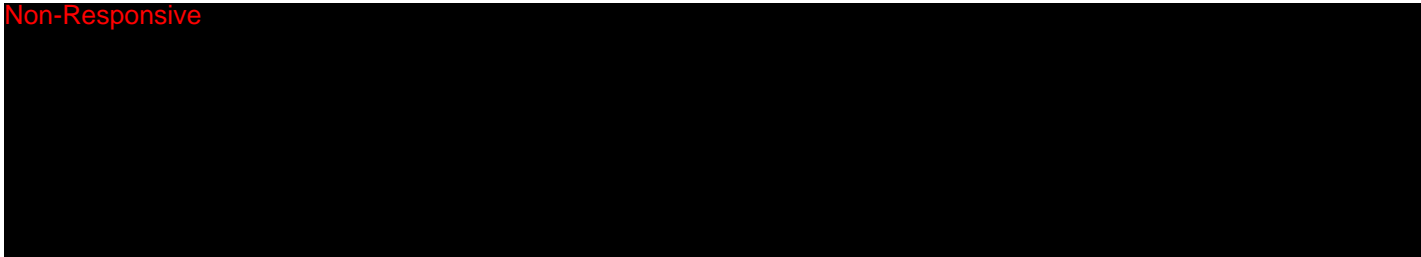


administrative



EPA OIG IGEMS POR...

Non-Responsive



Re: OIG Dispersant report - IBM Lotus Notes

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Re: OIG Dispersant report

Dana Tulis to: Erin Barnes-Weaver

Cc: Patrick Gilbride, Mathy Stanislaus, Craig Matthiessen, Kim Jennings, Larry Stanton, Victoria Vanroden

From: Dana Tulis/DC/USEPA/US

To: Erin Barnes-Weaver/IG/R8/USEPA/US@EPA

Cc: Patrick Gilbride/IG/R8/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Victoria Vanroden/DC/USEPA/US@EPA, Craig Matthiessen/DC/USEPA/US@EPA

History: This message has been replied to and forwarded.

That works, thank you.

Dana S. Tulis
Deputy Office Director
Office of Emergency Management
Environmental Protection Agency
202-564-8600

Erin Barnes-Weaver

Hi Dana – I'm able to get back to you sooner than expected.

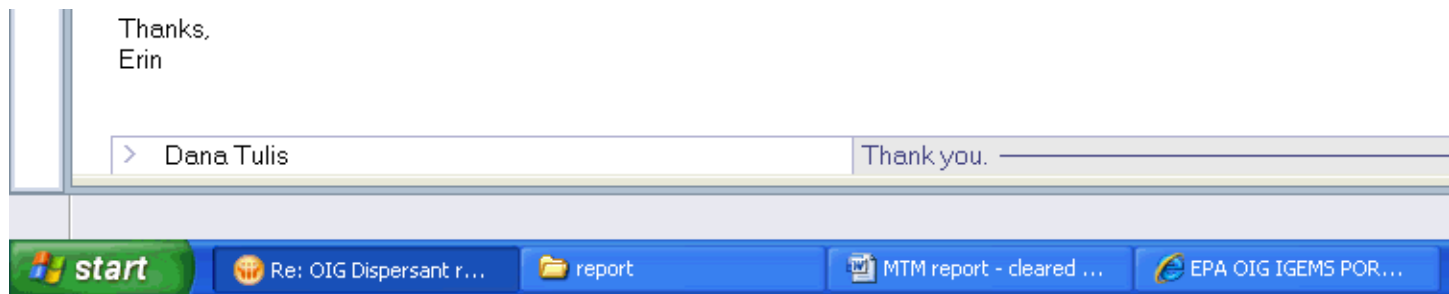
From: Erin Barnes-Weaver/IG/R8/USEPA/US
To: Dana Tulis/DC/USEPA/US@EPA
Cc: Patrick Gilbride/IG/R8/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Craig Matthiessen/DC/USEPA/US@EPA
Date: 08/18/2011 04:03 PM
Subject: Re: OIG Dispersant report

Hi Dana –

I'm able to get back to you sooner than expected.

We removed the sentence in question from our report ([REDACTED])

We do not anticipate further revisions to this text after today and we plan to proceed with our final report issuance by the end of the month.



Status: Approved
Current Editor List:

Level 1 approval:

Level 2 approval: Approved

Send To:

Patrick Gilbride Granted Mass Approval 09/07/2011 08:11:33 AM

Linkage Information

History

Our team met at 10:00 AM/MT on Tuesday, July 5, 2011, and subsequently through July 12, 2011, to discuss our disposition on EPA's response. **Blue font below summarizes our team disposition**, and yellow highlighting denotes changes we made to the final report based on OSWER's response.

MEMORANDUM

SUBJECT: Environmental Protection Agency's (EPA) Response to OIG's Draft Report: "*Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill*," Project No. OA-FY10-0221

FROM: Mathy Stanislaus
Assistant Administrator

TO: Melissa M. Heist
Assistant Inspector General for Audit

We appreciate the opportunity to comment on the Office of Inspector General (OIG) draft audit report: "*Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill*" (Project No. OA-FY10-0221), dated May 24, 2011.

The Deepwater Horizon (DWH) Oil Spill was an unprecedented event requiring an extraordinary response. Throughout the course of the spill and for a time following the capping of the well, EPA collected, analyzed and posted data on the Agency's website for over 5,000 air, waste, sediment, and water samples; developed and implemented policies associated with the unanticipated use of dispersants necessitated by this event; conducted scientific testing in expedient timeframes; and demonstrated proactive efforts to improve operations. Although the report recognizes many of the Agency's accomplishments and we generally agree with the recommendations, there are portions requiring clarification, and we modified the fifth and seventh recommendations.

The report does not accurately delineate the roles of EPA and the U.S. Coast Guard (USCG) in the DWH response. Under the National Contingency Plan (NCP), the USCG is the lead agency in response to **coastal** oil spills. EPA is the lead agency in response to inland oil spills. In this event, EPA supported the USCG and worked with federal partners to ensure timely and responsible decisions. In this regard, the statement that "EPA was not prepared for quantity and duration of dispersant use" (pp 11 and 13) should be clarified to avoid the implication that the support EPA provided to the USCG was inadequate. EPA acknowledges that the quantity and duration of dispersant use were unprecedented during the DWH Spill of National Significance (SONS) event.

EPA mobilized quickly and efficiently in support of the federal spill response. Numerous activities demonstrate EPA's contributions, including deployment of personnel and equipment into the field, enhanced monitoring activities, daily public data posting, collaboration and cooperation with federal partners, involvement and expertise of EPA's research community to support decision making with sound science, development of waste management strategies and incorporation of environmental justice concerns into any and all decision-making. Throughout the course of the spill, EPA conducted this work at the highest level of scientific integrity, while adapting and responding rapidly to ever-changing conditions and challenges of a crisis.

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Our specific comments (provided in the Attachment) address concerns that require attention and consideration. Should you have any questions, please contact Dana Tulis in the Office of Emergency Management at (202) 564-8600. We appreciate your efforts and your incorporation of our comments as you develop the final report.

This transmittal covers responses to recommendations regarding OSWER. Assistant Administrator Paul Anastas has indicated that he will respond separately regarding recommendations applicable to ORD.

Attachment

cc: Paul Anastas

ATTACHMENT

Specific comments are detailed below by section and chapter:

“At a Glance”

1. “... EPA did not proceed with rulemaking before the Deepwater Horizon oil spill occurred because of competing priorities and changes in management. If EPA had updated Subpart J, more reliable efficacy data could have been readily available during the oil spill.” Although this is true, only three of the eight dispersant products tested by EPA for effectiveness using the preferred Baffled Flask Test would pass proposed efficacy criteria. One of the three is the dispersant used in the spill. Consequently, even with this additional information, the dispersant used in this spill would likely not have changed. Separately, the lessons learned from DWH have informed an on-going examination of Subpart J.

OIG Disposition:

We agree with OSWER’s comment and noted that the dispersant used in the spill would likely not have changed if the Baffled Flask Test data was available. We noted this in the report body instead of in the At a Glance; specifically, we included the following text in the “Agency Comments and OIG Evaluation” after the “Recommendations” section of Chapter 2:

OSWER said that, even with the additional information provided by the BFT, the dispersant used in the Deepwater Horizon oil spill would likely not have changed, and that lessons learned from the spill have informed an ongoing examination of Subpart J. While this may have been the case, we maintain – as OSWER did in earlier discussions with our team – that more reliable data would have been ~~more readily~~ available had OSWER proceeded with its plan to update Subpart J prior to the spill. We revised our report text as appropriate based on OSWER’s response.

2. “EPA increased its involvement because (a) it was not prepared for the amount of the dispersant use, and (b) additional clarity was needed on roles and responsibilities in responding to a Spill of National Significance. EPA’s increased involvement created confusion as to who at EPA led response efforts for dispersant use.” EPA increased its involvement not because it wasn’t prepared for the amount of dispersant use but because the amount of dispersant use was unprecedented. EPA has decision-making authority under Subpart J of the NCP. The EPA

Commented [RCM1]: I don’t believe data would have been more or less readily available and this modifier isn’t needed. The efficacy data is on our website and immediately available regardless of method used. Unless you are making an argument that we had to go to the laboratory during the spill to run efficacy tests using the new methodology to confirm the performance of listed dispersants. If that’s what you are saying, then that issue needs to be spelled out. And if so, it is true that time was needed to generate the data but the results demonstrated no compelling difference in the dispersant used.

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representative to the Regional Response Team (RRT) must concur on any pre-authorization for the use of chemical agents (such as dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill agents) for any oil spill. The EPA representative to the RRT must also concur on the use of chemical agents for spill situations not addressed by pre-authorization plans. During the Deepwater Horizon spill, EPA was consulted and responded in an expeditious manner.

OIG Disposition:

We agree with OSWER that the amount of dispersant use was unprecedented, and we changed our final report text to acknowledge this. We included the word “unprecedented” in the 2nd paragraph of the At A Glance under What We Found:

EPA increased its involvement because (a) it was not prepared for the **unprecedented** amount of the dispersant use, and (b) additional clarity was needed on roles and responsibilities in responding to a Spill of National Significance.

We maintain that EPA was not prepared for the amount and length of dispersant use during the Deepwater Horizon oil spill. In saying this, we are not implying that EPA’s response efforts were inadequate. Instead, we believe that actions could have been taken prior to the spill to better prepare for such an event. We also agree that the representative to the RRT must concur on the use of chemical agents for spill situations not addressed by pre-authorization plans. However, EPA senior Agency officials and NRT members were also involved in daily dispersant decisions rather than only concurrence from the RRT representative.

We also included the following in Appendix E of our final report (Appendix E contains our evaluation of OSWER’s comments):

Note 1 – Response to “At a Glance” Comment 2

We agree with OSWER that the amount of dispersant use was unprecedented, and we changed our report text to acknowledge this. Nevertheless, we maintain that there are actions EPA could have taken to be better prepared for the Deepwater Horizon oil spill, such as applying lessons learned from past exercises and major events and other actions we describe in Chapter 3 of our report. In saying this, we are not implying that EPA’s response efforts were inadequate. We agree that the representative to the RRT must concur on the use of chemical agents for spill situations not addressed by pre-authorization plans.

Commented [DT2]

Chapter 1

Comment:

Barry Breen emailed Melissa the following suggestion on 07/01/11:

Hi, Melissa. Yesterday we sent you our comments on the draft report on Deepwater Horizon, dispersants, and the NCP. One of our comments, included in the attachment, related to Chapter 1 page

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2. To supplement on that technical point, we thought the following additional explanation might also be of help¹; and so we wanted to offer it to you.

For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in communicating with affected parties and the public and coordinating federal, state, local, and international resources at the national level. For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level.

Barry Breen

1. Page 2, “*For a Spill of National Significance, Subpart D of the NCP states that USCG [United States Coast Guard] and EPA can name a National Incident Commander to assume the role of OSC for spills occurring in coastal and inland zones, respectively.*” The statement does not fully reflect 40CFR300.323. The USCG appoints the FOSC in the coastal zone and EPA appoints the FOSC in the inland zone. The “National Incident Commander” title is used in 40CFR300.323 only for the coastal zone.

OIG Disposition:

We agree and changed our final report text to clarify this point; specifically, we made the following changes to the NCP section of our Background text in Chapter 1:

The NCP designates the USCG as the lead response agency and appoints the OSC for spills within or threatening coastal zones, whereas EPA leads and appoints the OSC for response to spills that occur in inland zones. For a Spill of National Significance in the coastal zone, Subpart D of the NCP states that USCG and EPA can name a National Incident Commander to assume the role of OSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level for spills occurring in coastal and inland zones, respectively. Subpart D For a Spill of National Significance in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC. The NCP also says coordination will involve, as appropriate, the NRT, RRTs, governors of affected states, and mayors or other chief executives of local governments.

2. Page 4, “*The spill lasted 87 days and spilled an estimated 4.9 million barrels of oil, making it the largest marine oil spill in U.S. history.*” OIG should note that investigation into the number of barrels spilled is ongoing.

OIG Disposition:

We agree and noted this in our final report. We added a footnote to the Deepwater Horizon Oil Spill section of Chapter 1 as follows:

The spill lasted 87 days and spilled an estimated 4.9 million barrels¹ of oil, making it the largest marine oil spill in U.S. history.

FN1: ¹ In its response to our draft report, OSWER indicated that there is an ongoing investigation into the number of barrels spilled.

Commented [DT3]: I have attached a new version, some words were inadvertently deleted

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Chapter 2

1. Page 1, “*The BFT [Baffled Flask Test] has proved more reproducible, and if EPA had updated Subpart J to include it as the standard testing protocol, more reliable efficacy data would have been readily available at the time of the Deepwater Horizon oil spill.*” As noted above, it is true more reliable efficacy data would have been available at the time of the spill. But test results shows that this data may not have made any difference in the dispersant used.

OIG Disposition:

We understand and agree that the dispersant used in the spill response may not have changed based on the Baffled Flask Test data and we added text in the final report to reflect this point. We made the following changes in the “Agency Comments and OIG Evaluation” part of Chapter 2:

OSWER said that, even with the additional information provided by the BFT, the dispersant used in the Deepwater Horizon oil spill would likely not have changed, and that lessons learned from the spill have informed an ongoing examination of Subpart J.

2. Table 2, “*Dispersant Efficacy Ranking Using SFT [Swirling Flask Test] and BFT [Baffled Flask Test]*” may be misleading. The efficacy test data in Column 1 is an average of two oils using the SFT while the data in Columns 2 and 3 is for only one oil using the BFT. The underlying data confirms that the dispersant used compares well with all those available at the time of the spill.

OIG Disposition:

We agree and added text below the table. The “Source” statement below Table 2 now reads:

Source: OIG analysis of NCP Technical Notebook SFT results and ORD’s report.¹ Column 1 is an average of two oils using the SFT whereas columns 2 and 3 are for one oil using the BFT.

Commented [DT4]: You would also need to delete the sentence on page 9, that says “Table 2 shows how results from the two testing procedures would have provided different information from decision-makers”

Chapter 3

1. Page 1, “*We found that responders to the Deepwater Horizon oil spill could have used other dispersants in the response, but not within the window of time afforded by Addendum 2 to the pertinent Joint Directive. Further, we found that EPA increased its involvement in the Deepwater Horizon oil spill response beyond the role envisioned for the Agency in the NCP for deep water spills, due primarily to USCG’s request given concerns surrounding the use of dispersants and subsea application.*” Choice of dispersants was initially vested in the USCG FOSC. In exercising its concurrence via the Joint Directive, EPA reviewed available information and required additional toxicity testing. EPA increased its involvement given the concerns surrounding the use of dispersants but its role was entirely consistent with the NCP. Prior to the Deepwater Horizon oil spill the US had never used dispersant subsea or in such quantities. Finally, as noted above, the EPA representative to the RRT must concur on any pre-authorization for the use of chemical agents on any oil spill or on the use of chemical agents for spill situations not addressed by pre-authorization plans.

¹ There were differences in testing protocol between the SFT conducted for the schedule and this study; therefore, we limited comparability of information to ranking efficacy test results

OIG Disposition:

We changed the Chapter 3 charge paragraph to read:

Further, we found that EPA increased its involvement in the Deepwater Horizon oil spill response [REDACTED]

Commented [DT5]: [REDACTED]

Although we agree that the EPA representative to the RRT must concur on dispersant use not addressed by pre-authorization plans, the concurrence role put in place for aerial application of dispersants included other senior Agency officials and NRT members. Furthermore, the EPA representative to the RRT stated that he did not have the authority to make decisions. We believe that this is beyond the role specified in the NCP, but understand that it may have been necessary due to the unprecedented nature of the spill.

We included the following in Appendix E of our final report:

Note 2 – Response to Chapter 3 Comment 1

We changed our final report to read, “We found that EPA increased its involvement in the Deepwater Horizon oil spill due to concerns surrounding the use of dispersants.”

“...” Although we agree that the EPA representative to the RRT must concur on dispersant use not addressed by pre-authorization plans, the concurrence process put in place for aerial dispersant applications included other senior Agency officials and NRT members. We understand that EPA felt it necessary to structure this concurrence process in light of the unprecedented nature of the spill; however, the EPA representative to the RRT stated that they did not have the authority to make decisions. Applying lessons learned from this response would help clarify roles and responsibilities of senior Agency officials alongside those of responders identified in the NCP (e.g. RRT representatives).

Commented [DT6]: I provided some suggested edits

Commented [DT7]: [REDACTED]

Commented [RCM8]: This needs to be edited. For example, “however, the EPA representative to the RRT stated that they thought they might not have the authority to make decisions.”

2. Page 11, ‘EPA was not prepared for the amount and length of dispersant use.’ The magnitudes of oil spilled and dispersant used were unprecedented. However, this should not imply that EPA’s support was inadequate.

OIG Disposition:

Throughout our report, we did not intend to imply that EPA’s support to USCG in the response was inadequate by any means. We simply say that EPA was not prepared for the amount and length of dispersant use. We do not believe that we are in a place to judge the adequacy of EPA’s response. We added the word “unprecedented” the bullets in the Chapter 3 charge paragraph and to the sub-caption in Chapter 3 as follows:

We identified two main reasons why EPA increased its involvement during the spill:

- EPA was not prepared for the unprecedented amount, and length of-dispersant use.

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- EPA and others needed additional clarity on roles and responsibilities for a response to a Spill of National Significance.

EPA Was Not Prepared for Unprecedented Quantity and Duration of Dispersant Use

3. Page 12, “Three of the five dispersant manufacturers contacted believed they wasted their time in responding to various requests for information, that responders never really considered their products, and that responders did not capture their production capabilities.” EPA is sympathetic with the manufacturer’s concerns. At the same time, as noted above, USCG had the lead for dispersant choice. EPA worked during the spill to be as transparent and open as possible regarding the situation with manufacturers under unusual circumstances and the challenges associated with potentially interrupting the spill response to change products along with whether sufficient quantity could be provided. EPA was not able to obtain consistent information regarding production capacities from some of the manufacturers.

OIG Disposition:

We agree and acknowledge this in the final report. We made the following change to Chapter 3:

Three of the five dispersant manufacturers contacted believed they wasted their time in responding to various requests for information, that responders never really considered their products, and that responders did not capture their production capabilities. OSWER said it was not able to obtain consistent information on production capacities from some manufacturers, and that the Agency worked during the spill to be as transparent and open as possible with manufacturers.

4. Page 13, “Improved contingency planning using available information could have better prepared EPA to support USCG’s response to the spill.” As previously stated, the Deepwater Horizon Oil Spill was an unprecedented event. However, this should not imply that EPA’s support to the USCG was inadequate.

OIG Disposition:

We did not intend to imply that EPA’s support to USCG was inadequate. We added the word “unprecedented” to our report (e.g. At a Glance, Chapter 3 charge, Chapter 3 sub-caption).

5. Page 14, “Lessons learned from Spill of National Significance exercises in 2002 stating that pre-authorization plans should address potential shortfalls of dispersant supplies and equipment. Hurricanes Katrina and Rita in 2004 and 2005, which collectively destroyed 113 oil platforms, 70 vessels, and nearly 130 oil and natural gas pipelines, and ravaged the Gulf Coast with major impacts to offshore infrastructure and operations.” These statements need clarification. They seem to suggest that dispersants were involved in the exercises and hurricane responses from which EPA could have learned and been better prepared. This is not the case. Although it is true pre-authorization plans should address shortfalls of dispersant supplies and equipment, the exercises and hurricanes did not involve or contemplate the use of dispersants to the extent as in the BP Spill. Note that EPA and USCG did update the area contingency plan (ACP) in spring of 2010. This update was completed in the spring of 2010 despite the responses to Hurricanes Katrina, Rita, Gustav, and Ike.

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OIG Disposition:

We added text to clarify these statements. We meant for the three bulleted examples to demonstrate events that should trigger updates to contingency plans, regardless of whether dispersants were used or not. First, we agree with OSWER that dispersants were not used in the Gulf of Mexico SONS exercise in 2002, but the lessons learned document from that exercise considered the use of dispersants a national issue and assigned EPA and USCG to address the shortfalls of dispersants. Additionally, Hurricanes Katrina and Rita caused a great deal of damage in the Gulf of Mexico related to oil spills, yet the deepwater contingency plans were not updated to reflect upon the simultaneous events and extensive damage that they caused.

We made the following changes to Chapter 3:

Plans were not updated to address the following events:

- A dramatic expansion of deepwater drilling in the Gulf of Mexico. Oil production in the Gulf grew from 275 million barrels in 1990, where 4.4 percent came from deepwater wells, to 567 million barrels in 2009, where deepwater wells yielded more than 80 percent of the total. In addition, from 2001 to 2004, 11 major oil fields were discovered in water depths of 7,000 feet or more. Figure 2 shows the increase in water depth of wells drilled in the Gulf from 1940 to 2010.
- Lessons learned from **Gulf of Mexico** Spill of National Significance exercises in 2002 stating that pre-authorization plans should address potential shortfalls of dispersant supplies and equipment. **The lessons learned document assigned EPA and USCG as the steward agencies, yet plans were not updated to address dispersant shortfalls. OSWER said that dispersants were not used in this exercise but agreed that pre-authorization plans should address shortfalls of dispersant supplies and equipment.**
- Hurricanes Katrina and Rita in 2004 and 2005, which collectively destroyed 113 oil platforms, 70 vessels, and nearly 130 oil and natural gas pipelines, and ravaged the Gulf Coast with major impacts to offshore infrastructure and operations. **An EPA Region 6 Division Director said contingency plans for inland zones were updated to address this event, but plans for deepwater could have been updated to reflect the volume of oil spilled and the short interval of time between the two storms.**

This statement is not accurate. Hurricanes Katrina and Rita occurred in 2005, Aug 29 and Sep 24 respectively. In 2008, Hurricanes Ike and Gustav again devastated the Gulf coast. In fact very little dispersant was used in response to the spills caused by these storms. Plans could NOT have been updated in the 3 - 4 weeks between the storms. That statement is puzzling. The DD in question is me (S. Coleman), and that is NOT what I said to the OIG. Furthermore, as we stated in our response, the contingency plans were in fact being updated when the spill occurred. The OIG understates the effort needed to update and obtain concurrence from over a dozen member Agencies involved in the RRT.

We also included the following in Appendix E of our final report:

Note 3 – Response to Chapter 3 Comment 5

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We added text to clarify these statements. Our three bulleted examples meant to demonstrate events that should trigger updates to contingency plans, regardless of whether or not dispersants were used. We agree with OSWER that dispersants were not used in the 2002 Gulf of Mexico SONS exercise, but the lessons learned document from the exercise considers the use of dispersants a national issue and assigned EPA and USCG to address the shortfalls of dispersants. Additionally, Hurricanes Katrina and Rita caused a great deal of damage in the Gulf of Mexico to oil facilities, yet deepwater contingency plans were not updated to account for simultaneous events and/or the extensive damage that they caused.

This statement is not accurate. Hurricanes Katrina and Rita occurred in 2005. Hurricanes Ike and Gustav again devastated the Gulf coast. In fact very little dispersant was used in response to the spills caused by these storms. Plans could NOT have been updated in the 3 - 4 weeks between the storms. That statement is puzzling. The DD in question is me (S. Coleman), and that is NOT what I said to the OIG. Furthermore, as we stated in our response, the contingency plans were in fact being updated when the spill occurred. The OIG underestimates the effort needed to update and obtain concurrence from over a dozen member Agencies involved in the RRT.

6. Page 14, *"The Ixtoc I spill in the Gulf of Mexico in 1979 released 3.3 million barrels of oil and lasted over 10 months. The Region 6 RRT could have used knowledge gained from this spill to update its Regional Integrated Contingency Plan to better address worse-case discharges and spill duration."* The Ixtoc Oil Spill in 1979 occurred before OPA existed and before the ACP was developed. Thus, its lessons were available before the ACP was drafted and we question the record support for the conclusion that the ACP needed updating to reflect it.

OIG Disposition:

We disagree with OSWER's comment. In addition to spilling 3.3 million barrels of oil and lasting over 10 months, between 1 and 2.5 million gallons of dispersants were applied in response to the Ixtoc I spill. Regardless of the spill occurring prior to OPA and the ACP, a spill duration of 10 months and this amount of dispersants could have been taken into consideration when developing planning documents.

We made the following changes to Chapter 3:

The Ixtoc I spill in the Gulf of Mexico in 1979 released 3.3 million barrels of oil, lasted over 10 months, and applied between 1 and 2.5 million of mostly Corexit dispersant products. OSWER said lessons from this 1979 spill were available before the Contingency Plan was drafted. However, we found that the Region 6 RRT ~~did not~~ **could have used** knowledge gained from this spill to update its Regional Integrated Contingency Plan to better address worst-case discharges and spill duration. The Region 6 RRT Regional Integrated Contingency Plan still lists 100,000 gallons as a major discharge in coastal waters and does not address the duration of a spill. In addition, ORD's Assistant Administrator said ORD would have liked to have more data and insight from the Ixtoc I spill to build into decision making for future spills.

Commented [RCM9]: One difference for Deepwater Horizon is subsea application which would have been very difficult to foresee

The statements in this section are again inaccurate and misleading. In Region 6 the Ixtoc spill is known and in fact legendary. Our work on the ACP selected a lower threshold for determining a major spill is important as a conservative level to assure the protection of sensitive Gulf of Mexico natural resources. The threshold is also consistent with the NCP. Assuming a larger spill would only lessen the response requirements.

We also included the following in Appendix E of our final report:

Note 4 – Response to Chapter 3 Comment 6

In addition to spilling 3.3 million barrels of oil and lasting over 10 months, between 1 and 2.5 million gallons of dispersants were applied in response to the Ixtoc I spill. Even though this spill occurred prior to OPA and the ACP, the Ixtoc I spill duration and amount of dispersants was not considered when drafting either of these documents. We understand that the Deepwater Horizon oil spill was unprecedented in many ways, yet the historic Ixtoc I spill could have been taken into consideration when developing planning documents.

Commented [RCM10]: See previous comment; also applicable here

7. Page 15, “An EPA Region 6 Division Director said he did not believe EPA could have anticipated a spill of this magnitude. However, more detailed and updated contingency planning using available information could have better prepared EPA and others to respond to the spill. Future planning should consider the Deepwater Horizon scenario and address worst case discharges, lessons learned from Spill of National Significance exercises, and industry trends.” In context, it seems the Region 6 Division Director was speaking directly to the use of dispersants under the pre-approval plan and the inability of the USCG and the RP to control the release. EPA fulfilled its obligations as a co-chair of the Regional Response Team (RRT), and exercised its concurrence on the use of a dispersant based on the dispersants available. The dispersant pre-approval plan was not anticipated for long-term use, rather pre-approval was developed to assure that the FOSC and/or the RP has appropriate tools for the immediate response to a spill. Because of this, EPA increased its involvement in surface dispersant decisions during the Deepwater Horizon oil spill and instituted procedures to monitor for effects associated with the sub-surface application of dispersants. Region 6 is working within the Region 6 RRT to revisit the conditions associated with dispersant use under the Pre-Authorization Plan.

OIG Disposition:

We agree with OSWER that the pre-approval plan was not anticipated for long-term use, but EPA could have considered the duration of the Ixtoc I spill, where dispersants were used, to better plan for long-term use.

We made the following changes to Chapter 3:

An EPA Region 6 Division Director said he did not believe EPA could have anticipated a spill of this magnitude, and OSWER said that the dispersant pre-approval plan was not anticipated for long-term use. However, more detailed and updated contingency planning

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using available information could have better prepared EPA and others to respond to the spill.

8. Page 16, “...the NCP does not provide *extensive* guidance on the roles and responsibilities of the National Incident Commander and other high-level officials. As a result, *some staff had the impression that the involvement by senior EPA officials created confusion as to who made dispersant decisions.*” All decisions regarding dispersants and involving senior officials were clearly and appropriately vetted thru the National Response Team (NRT) as well as the RRT.

OIG Disposition:

Throughout our fieldwork, we heard from multiple interviewees *who had the impression that involvement by senior EPA officials created confusion as to who made decisions regarding dispersant applications. We are not implying that decisions made were incorrect, but we maintain that additional guidance on roles and responsibilities of high-level officials is necessary, as stated in Recommendation 5.*

We made the following changes to Chapter 3:

Key staff in Region 6, including EPA’s representative to the Region 6 RRT and staff involved in the response, said they did not have the authority to approve dispersant applications. One described the process as “very political” and said “operational control was taken away from the region.” As a result, EPA’s additional involvement in daily surface application decisions created confusion as to who in the Agency made decisions. In its response to our draft report, OSWER said that the RRT representative was heavily involved in the decision-making process, and that the decision-making process included RRT and NRT members.

I think I now understand the disconnect with this section. The Region 6 Representative to the RRT was replaced by the DD during the response. Acting in that capacity, I was in fact prepared and authorized to approve the use of dispersant. I did confer/consult with EPA HQ as needed, and kept HQ informed of the decisions that were made, as well as the actual amount that was used each day. Additionally, EPA placed designated EPA managers in the field in Houma, LA, with NOAA, USCG and the RP to implement a specific process that was known and agreed to by all parties. Some EPA staff did not agree with this process and likely expressed their disagreement with the OIG. I feel this should be accurately expressed as a disagreement with their management rather than they did not have authority. The OIG asked the Region 6 staff specific questions regarding their individual authority to approve large amounts of dispersants. This question in itself is misleading. EPA’s involvement and the directive of the Administrator was to limit the amount of dispersant. We were not intending to approve large amounts. Documents detailing how dispersant use was done on a daily basis do not support this finding.

9. Page 16 *Under the NCP, for spills occurring in coastal zones, EPA is not given any decision-making authority, but EPA is responsible for planning prior to a spill and supporting the USCG during a response. The NCP states that for a Spill of National Significance in the coastal zone, USCG may name a National Incident Commander who assumes the role of the OSC in communicating with affected parties and coordinating resources at the national level. The NCP further states that coordination will involve the NRT, RRTs, and others as appropriate. However,*

Commented [RCM11]: True but perhaps the previous sentence is an impression rather than what actually transpired as discussed in red text from R6 below See suggested edit in this section

Commented [DT12]: Yes, see and that was appropriate, see OGC citations

the NCP does not address how high level officials other than the National Incident Commander can and should participate in such a response.” EPA does have decision-making authority under Subpart J of the NCP. The EPA representative to the RRT must concur on any pre-authorization for the use of chemical agents (such as dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill agents) for any oil spill. The EPA representative to the RRT must also concur on the use of chemical agents for spill situations not addressed by preauthorization plans. Finally, 40CFR300.323(b) addresses the role of EPA senior officials in responding to a Spill of National Significance which provides EPA a concurrence role; 40 CFR 300.323(b) provides that the Administrator may name a senior Agency official to assist in strategic coordination.

OIG Disposition:

We agree with OSWER that the EPA representative to the RRT must concur on the use of dispersants. However, we disagree as to how far this decision-making authority goes. During the Deepwater Horizon oil spill, senior Agency officials became involved in the daily decisions to apply dispersant on the surface. [REDACTED]

Commented [DT13]: [REDACTED]

In addition to the immediately preceding change to address OSWER’s Chapter 3 Comment 8, we made the following changes to Chapter 3:

The concurrence process in place for surface dispersant application inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator. EPA senior officials believe their involvement in the decision to apply dispersants subsurface reduced the total amount of dispersants applied overall (subsurface and surface). EPA officials also believe subsurface dispersant application was effective. In its response to our draft report, OSWER said that all decisions regarding dispersants and involving senior officials were clearly and appropriately vetted through the NRT and the RRT. However, as the President’s Commission Report noted, due to insufficient guidance on roles and responsibilities for a Spill of National Significance, an additional protocol is needed that accounts for participation by high-level officials. OSWER agrees about that the NCP needs for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

Conclusion

[REDACTED]. EPA’s increased involvement in operational decisions created confusion within and outside the Agency. EPA could better respond to future significant spills by enhancing planning efforts to address unknowns encountered in the Deepwater Horizon response and by clarifying roles and responsibilities of senior Agency officials.

Commented [DT14]: See comment DT6 and OGC citations

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We also included the following in Appendix E of our final report:

Note 5 – Response to Chapter 3 Comment 9

[REDACTED]

Commented [DT15]: [REDACTED]

10. Page 16. *“It was unclear in our review what responders based the 15,000-gallon limit upon, but the Addendum sought to limit dispersant use and require more documentation because of concerns about ongoing dispersant applications at such large volumes.”* The gallon limit was based on a 75% reduction in the total volume of dispersant used.

OIG Disposition:

We added text in our report to address this. We made the following changes to Chapter 3:

On May 26, 2010, EPA and USCG issued Addendum 3 to the Directive and required BP to limit the use of dispersants subsurface to 15,000 gallons per day and eliminate surface application except when granted exemption. In its response to our draft report, OSWER said based the limit on a 75% reduction in the total volume of dispersant used. However, it was unclear in our review what responders based the 15,000-gallon limit upon, but the Addendum sought to limit dispersant use and require more documentation because of concerns about ongoing dispersant applications at such large volumes.

Commented [DT16]: The amount of subsurface dispersant used was based on a flow rate averaging about 10 gpm which came out to an upper limit of (14,400 rounded up) 15,000 gallons per day/ EPA was encouraging the use of subsurface application up to 15,000 gallons per day and trying to minimize surface application. With a high end use of 70,000 gpd - a 75 percent reduction, gets to the number of 17,500 gallons per day, this assumed an upper limit of 15,000 gpd for subsurface dispersants and about 2500 surface dispersant per day. The directive also noted that there may be exceptions

11. Page 17, *“Rather than EPA’s involvement occurring though the RRT and NRT as would happen in a typical response under the NCP, senior EPA officials became involved in daily surface dispersant decisions....Key staff in Region 6, including EPA’s representative to the Region 6 RRT and staff involved in the response, said they did not have the authority to approve dispersant applications.”* The text should go on to point that out the RRT representative was heavily involved in the decision-making process, and that the decision-making process included the RRT and the NRT members. Senior Agency officials in Area Command, in consultation with EPA’s representatives in the Incident Command, gave concurrence to the FOSC.

OIG Disposition:

We agree and added text in the report to point out that the RRT representative was involved in decision making (see how we addressed preceding comments #8 and #9 for report changes).

Commented [DT17]: Please see our response to your comments

12. Page 17, *“The concurrence process in place for surface dispersants inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator.”* We are unclear on the support in the record that delays occurred or were

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inherent given the frequent and ready communication within the Agency. Timely decisions were made given the magnitude of dispersant use.

OIG Disposition:

As OSWER noted in Comment 7 under Chapter 3, pre-approval was developed to assure that the FOSC and/or the RP has appropriate tools for immediate response to a spill. We agree with this point and believe that the concurrence process that was developed during the spill response – where senior Agency officials made decisions instead of the RRT representative – inherently created delays. We understand that this was an unprecedented spill, and we do not believe we are in a position to say decisions were made timely or not in every instance. However, we believe that by going up and down the chain of command, instead of the RRT representative being able to make decisions on the spot, was a delay in itself.

We made the following changes to Chapter 3:

The concurrence process in place for surface dispersant application inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator. EPA senior officials believe their involvement in the decision to apply dispersants subsurface reduced the total amount of dispersants applied overall (subsurface and surface). EPA officials also believe subsurface dispersant application was effective. In its response to our draft report, OSWER said that all decisions regarding dispersants and involving senior officials were clearly and appropriately vetted through the NRT and the RRT. However, as the President's Commission Report noted, due to insufficient guidance on roles and responsibilities for a Spill of National Significance, an additional protocol is needed that accounts for participation by high-level officials. OSWER agrees about that the NCP needs for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

We also included the following in Appendix E of our final report:

Note 6 – Response to Chapter 3 Comment 12

As OSWER noted in its Chapter 3 Comment 7, pre-approval was developed to assure that the FOSC and/or the responsible party has appropriate tools for immediate response to a spill. We agree and note that the concurrence process developed during the response – wherein EPA escalated decisions to senior Agency officials instead of the RRT representative – inherently created delays. We observed some examples where it took several hours for some dispersant application decisions and noted that these decisions could have been more immediate had EPA's RRT representative been able to make decisions in real time. We understand that this was an unprecedented spill and are not in a position to say decisions were "untimely" given the magnitude of the response. That said, escalating decisions up the command chain inherently creates delays over decisions made instantly by the RRT representative.

13. Page 18, "OSWER agrees that the NCP needs additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of

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National Significance.” The statement needs to be clarified to, “OSWER supports clarification of roles for SONS in NRT guidance. Further evaluation of changes to the NCP is on-going.”

OIG Disposition:

We added text to include this clarification. We made the following changes to Chapter 3:

OSWER agrees about that the NCP needs for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

14. Page 18, “EPA increased its involvement in the Deepwater Horizon oil spill over the role envisioned for the Agency in the NCP for deepwater spills.” EPA increased its involvement because the amount of dispersant used and the way in which it was applied (subsea) was unprecedented. EPA does not view this involvement as outside the role envisioned by the NCP for deepwater spills since, as stated above, EPA must concur on the use of dispersants in all spills.

OIG Disposition:

As noted above in Comment 1 of Chapter 3, we changed our report to read, “EPA increased its involvement in the Deepwater Horizon oil spill beyond the RRT concurrence role specified for the Agency in the NCP for deepwater spills.” We agree that EPA increased its involvement due to the amount of dispersant used and the way in which it was applied, and we added the word “unprecedented” throughout our report.

Commented [DT18]:

We noted the following in our “Agency Comments and OIG Evaluation” section in Chapter 3:

In its response to our draft report, OSWER generally agreed with our recommendations; however, OSWER has not yet submitted a corrective action plan to address our recommendations. OSWER’s response included comments and concerns on our Chapter 3 report text, most notably on the unprecedented nature of the Deepwater Horizon oil spill and that the Agency’s adaptation was within the NCP. We agree with OSWER on the magnitude of the spill, and we did not intend to imply that EPA’s support to USCG was inadequate or that decisions were inappropriate. We believe that our findings and corresponding recommendations align with the fact that this event was unprecedented, and that EPA should take action to address lessons learned.

Recommendations

As stated earlier, EPA generally agrees with most of OIG’s recommendations. Work is already under way to address most of the recommendations. However, EPA-OIG needs to modify recommendation 5 and 7, as noted below, to agree with these recommendations as well.

For recommendation 5, EPA has developed training on roles and responsibilities for large scale events. The NRT is also addressing lessons learned. As such, we propose revising recommendation 5 to state, “Develop training for a Spill of National Significance event that

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clarifies roles and responsibilities for high-level agency officials. Review the response and work with federal partners to address lessons learned, including reviewing the NCP on how to respond to a Spill of National Significance.

For recommendation 7, we want to clarify that the proposed rule may ask for comment on the manufacturer being responsible for tracking production capacities since this would not be an EPA responsibility.

Recommendation 7 should read: “As part of the action to review NCP Subpart J requirements, ensure that the proposed rule asks for comments on the manufacturer maintaining dispersant production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. When promulgating the final rule, work with federal partners and manufacturers to make this information widely available to the response community.”



Office of Inspector General

Administration Workpaper

Prepared by Todd Goldman 07/21/2011

Assignment: 2010 - 1371 - OA-FY10-0221 - Dispersant Approval

Area: 538

Goal: Clean and Safe Water

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 08/12/2010 through 08/12/2011

Section: E

Assignment Guide Name: Reporting

Origination Doclink: 

Subject: 7-21-11 OSWER Meeting on Comments to Disposition Document Subsection: E.011.02

Evidence Type(s): <input checked="" type="checkbox"/> - Documentary <input type="checkbox"/> - Analytical <input type="checkbox"/> - Observational <input type="checkbox"/> - Testimonial <input type="checkbox"/> - N/A		
<input type="checkbox"/> - PR <input type="checkbox"/> - FW <input checked="" type="checkbox"/> - Reporting	Event Date:	WP Milestone Date - 7 days for doc. reviews and interviews:
Project Guide Step Number: E.011.02		
Event Description: Meeting to Discuss OSWER's Comments to Our Disposition Document (Dispersant Report)		
** If appropriate, provide a description or cause for WP completion delay(s):		
NAME	DATE	COMMENTS
WP Prepared By: Todd Goldman	7/22/2011	
WP Completed By: Todd Goldman	8/2/2011	
WP Reviewed By: Erin Barnes-Weaver	08/03/11	<input checked="" type="checkbox"/> - I reviewed this WP and found it satisfactory. No comments. <input type="checkbox"/> - I reviewed this WP and found it satisfactory and provided comments in red font. <input type="checkbox"/> - I conducted a first review and provided reviewer notes in the table below.
WP Reviewed By:		
WP Peer Edited By:		

Purpose: To summarize and document our Conference Call with OSWER regarding their response to our disposition document. Conference Call on Thursday, July 21, 2011 – Noon/ET (duration 1 hour)

Attendees: OSWER:
Dana Tulis, Acting Director, OEM
Craig Matthiessen, Director, Regulation & Policy Development Division, OEM
Jim Bove, Office of General Counsel, OGC

OIG:
Patrick Gilbride, PLD
Erin Barnes-Weaver, Project Manager
MaryAnn Strasser, Auditor
Todd Goldman, Auditor

Date/Time: Tuesday, July 21, 2011, noon/EST (11AM/MST), via conference call (duration 1 hour)

Scope: This addresses step E.011.02 of our audit guide.

Conclusion:

We had a meeting on 07/21/11 with OSWER, and the OGC to discuss EPA's comments on the the disposition document. (see WP E.011.01)

fficial Draft Report we issued to them on 05/24/11 (see WP E.010). We do not believe we say that anywhere in the report. They had four citations that they felt clearly gave EPA authority. (see WP E.011.03) The planned to give us changes by COB Monday 7-25-2011. There response was discusses point by point. Issues that required OIG rebuttal based on facts obtained through our review were identified with a "Note-Chapter-Comment."

Summary:

Meeting Invitation



Meeting Invitation meeting Invite to discuss OSWER 7.21.2011.pdf



meeting to discuss OSWER's comments to our disposition document

Thu 07/21/2011 10:00 AM - 11:00 AM

Attendance is for Todd Goldman

Chair: **Erin Barnes-Weaver/IG/R8/USEPA/US**

Location: 1-866-299-3188 / 3033126871#

Required:

Craig Matthiessen/DC/USEPA/US@EPA, Dana Tulis/DC/USEPA/US@EPA, MaryAnne Strasser/IG/R8/USEPA/US@EPA, Patrick Gilbride/IG/R8/USEPA/US@EPA, Todd Goldman/IG/R8/USEPA/US@EPA

Optional:

Stephanie Wake/IG/R8/USEPA/US@EPA

Description

Per Dana's response to Pat's email Wednesday morning on the status of the Agency's comments, Dana suggested that we talk by phone and that we should get OSWER's comments Wednesday or Thursday. We went ahead and set up this meeting for **Thursday, July 21, at Noon/ET** to discuss OSWER's comments that we anticipate getting in advance of this discussion. We will use Erin's call-in line for the meeting: 1-866-299-3188 / 3033126871#.

Dana/Craig, please let Erin know if you would like to add invitees to this discussion.

Personal Notes



E-Mail Trail of Requests for Final Comments from OSWER
E-Mail Trail of Requests for Final Comments from OSWER



Re_ revised recommendations language and draft OIG disposition document.pdf


Re: revised recommendations language...

Records ▾ New ▾ Reply ▾ Forward ▾ Display ▾ More ▾

 **Re: revised recommendations language and draft OIG disposition document** 

Erin Barnes-Weaver to: Dana Tulis
Cc: Patrick Gilbride, Craig Matthiessen
Bcc: Todd Goldman [Hide Details](#)

07/20/2011 08:59 AM

From: Erin Barnes-Weaver@R8USEPAUS
To: Dana Tulis@DOUSEPAUS@EPA
Cc: Patrick Gilbride@R8USEPAUS@EPA, Craig Matthiessen@DOUSEPAUS@EPA
Bcc:  Todd Goldman@R8USEPAUS

Thanks for the update, Dana. I just sent out a meeting invite to ensure that we can talk by phone this week (with everyone's busy schedules). Please let me know if you want to include others in the meeting I just scheduled.

Also, we can describe during tomorrow's discussion how the "disposition" document we provided you last week is an internal document for our workpapers and is not what we would include in our final report. In the final report, we include the Agency's full response to the draft and denote our disposition in a much more streamlined, concise way in a separate appendix (to maintain the integrity of the Agency's comments). We also include brief paragraphs at the end of each chapter that summarize the Agency's comments and note our disposition, mainly on actions to address our recommendations. As a sample, please see the following final OIG report developed by another team (we plan to apply a similar format to appendices A and B in this report) <http://www.epa.gov/oig/reports/2011/20110503-11-P-0215.pdf>.

Thanks,
-Erin

Dana Tulis | I have new comments from OGC and I am working with OSWER management now and submitting our concerns | 07/20/2011 08:36:40 AM

From: Dana Tulis@DOUSEPAUS
To: Patrick Gilbride@R8USEPAUS@EPA
Cc: Erin Barnes-Weaver@R8USEPAUS@EPA, Craig Matthiessen@DOUSEPAUS@EPA
Date: 07/20/2011 08:36 AM
Subject: Re: revised recommendations language and draft OIG disposition document

I have new comments from OGC and I am working with OSWER management now and submitting our concerns to the way you addressed our comments. We probably need to talk by phone. Hope to get you something today or tomorrow the latest.

Dana S. Tulis
Acting Office Director
Office of Emergency Management
Environmental Protection Agency
202-564-8600

Patrick Gilbride | Hi Dana - Can you give me a status on the comments? We have OSWER's official comments, we were just | 07/20/2011 10:11:04 AM

From: Patrick Gilbride@R8USEPAUS
To: Dana Tulis@DOUSEPAUS@EPA
Cc: Erin Barnes-Weaver@R8USEPAUS@EPA, Craig Matthiessen@DOUSEPAUS@EPA
Date: 07/20/2011 10:11 AM
Subject: Re: revised recommendations language and draft OIG disposition document

Hi Dana - Can you give me a status on the comments? We have OSWER's official comments, we were just waiting to see if there were any additional wording changes from the disposition document.

Thanks
Pat

Patrick Gilbride
Director, Risk and Program Performance
U.S. EPA/OIG, Office of Audit
1595 Wynkoop - 4th Flr
Denver, CO 80202-1129
303-312-6969

Dana Tulis | Erin, so you know, I have OGC input and my comments are with OSWER mgt, hope to get back to you tomo | 07/18/2011 04:48:43 PM

From: Dana Tulis@DOUSEPAUS
To: Erin Barnes-Weaver@R8USEPAUS@EPA, Craig Matthiessen@DOUSEPAUS@EPA, John T Walsh@OIGUSEPAUS@EPA, MaryAnne Strasser@R8USEPAUS@EPA, Patrick Gilbride@R8USEPAUS@EPA, Peter Evanko@DOUSEPAUS@EPA, Sam Coleman@R8USEPAUS@EPA, Stephanie Wake@R8USEPAUS@EPA, Susan Jenkins@R8USEPAUS@EPA, Todd Goldman@R8USEPAUS@EPA
Date: 07/18/2011 04:48 PM
Subject: Re: revised recommendations language and draft OIG disposition document

Erin, so you know, I have OGC input and my comments are with OSWER mgt, hope to get back to you tomorrow. Thanks.

Dana S. Tulis
Acting Office Director
Office of Emergency Management

Environmental Protection Agency
202-564-8600

▼ Dana Tulis

Erin, I am sitting here after a day of meetings working on your comments. I must tell you, I need O

07/14/2011 06:22:40 PM

From: Dana Tulis/DCUSEPAUS
To: Erin Barnes-Weaver/IGR8/USEPAUS@EPA
Cc: Craig Matthiessen/DCUSEPAUS@EPA, John T Walsh/OIG/USEPAUS@EPA, MaryAnne Strassen/IGR8/USEPAUS@EPA, Patrick Gilbride/IGR8/USEPAUS@EPA, Peter Evanko/DCUSEPAUS@EPA, Sam Coleman/R6/USEPAUS@EPA, Stephanie Wake/IGR8/USEPAUS@EPA, Susan Jenkins/R6/USEPAUS@EPA, Todd Goldman/IGR8/USEPAUS@EPA
Date: 07/14/2011 06:22 PM
Subject: Re: revised recommendations language and draft OIG disposition document

Erin, I am sitting here after a day of meetings working on your comments. I must tell you, I need OGC to review our response to your comments and we will need more time. I have made some calls to OGC tonight without success, I will send my comments out tonight, and hope to hear back from OGC tomorrow, but there are folks on leave. I also left you a voice mail to explain further. Thanks.

Dana S. Tulis
Acting Office Director
Office of Emergency Management
Environmental Protection Agency
202-564-8600

▼ Erin Barnes-Weaver

Hi -- As a follow-up to our exit briefing this afternoon, attached is the "OIG disposition" document

07/12/2011 05:31:21 PM

From: Erin Barnes-Weaver/IGR8/USEPAUS
To: Dana Tulis/DCUSEPAUS@EPA, Craig Matthiessen/DCUSEPAUS@EPA, Sam Coleman/R6/USEPAUS@EPA
Cc: Susan Jenkins/R6/USEPAUS@EPA, Peter Evanko/DCUSEPAUS@EPA, John T Walsh/OIG/USEPAUS@EPA, Patrick Gilbride/IGR8/USEPAUS@EPA, MaryAnne Strassen/IGR8/USEPAUS@EPA, Stephanie Wake/IGR8/USEPAUS@EPA, Todd Goldman/IGR8/USEPAUS@EPA
Date: 07/12/2011 05:31 PM

Subject: revised recommendations language and draft OIG disposition document

Hi --

As a follow-up to our exit briefing this afternoon, attached is the "OIG disposition" document we discussed which shows how we plan to address each of your comments. The document shows your comment, our disposition in blue font, and yellow highlighted changes we plan to make to our report. As Pat noted, please provide any additional comments by COB Thursday, July 14 and recognize that, as an OIG product, we reserve the right to decide on any remaining changes to make to the report based on your additional comments.

Also, here is revised language for Recommendations #5 and #7 -- the letter of which we emended somewhat based on a team debrief we had after our exit meeting. Please respond by COB Thursday, July 14 with whether you concur with this language or suggest further edits by that time.

5. Develop training for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the response and work with federal partners to address lessons learned, including reviewing the NCP on how to respond to a Spill of National Significance.

7. As part of the action to review NCP Subpart J requirements, ensure that the proposed rule asks for comments on the manufacturer maintaining dispersant production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. When promulgating the final rule, work with federal partners and manufacturers to make this information widely available to the response community.

As always, thanks for the constructive discussion today and for continuing to work with us as we finalize our report.

Erin Barnes-Weaver
Project Manager
US EPA -- Office of Inspector General
1595 Wynkoop Street, 4th Floor
Denver, CO 80202
303.312.6871
barnes-weaver.erin@epa.gov

[attachment "7-12-11 OIG Disposition on OSWER Draft Report Response.docx" deleted by Patrick Gilbride/IGR8/USEPAUS]

Below are the Notes provided Erin Barnes-Weaver. Additional comments are added in Green by Todd Goldman



7-21-11 OSWER meeting on OIG Disposition document.docx

Participants:

Dana Tulis, OSWER

Craig Matthiessen, OSWER

Jim Bove, OGC
Patrick Gilbride, OIG
Erin Barnes-Weaver, OIG
Mary Anne Strasser, OIG
Todd Goldman, OIG

DT: When I got your version, I shared it with Region 6 and others (e.g. OGC). The reason I keep going back to OGC is because we are in litigation.

JB: John Fogarty has been the OECA liaison for the BP stuff.

DT: I went back to your report and saw a theme over and over again. I was cutting and pasting the same thing over and over again. I left Erin a voicemail for something I could not put in writing *[EBW's Note: I never received a voice message from Dana]* . I also talked to Sam (Coleman) and he had concerns. (Sam was on vacation and could not attend this meeting.)

DT: What we are doing now is negotiating. [REDACTED]

[REDACTED] There are four citations I will be sending to you on why and how senior officials get involved in a SONS. In EPA, I would consider the Administrator the senior official, particularly on dispersants. Even though the USCG was the FOSC, EPA had clear lines of authority, also in our nonconcurrence role on the RRT. (DT then went through the four citations, and JB chimed in as appropriate.)

[REDACTED]

DT: Jim, do you want to explain 311?

[REDACTED]

DT: So we are going through your comments to our comments for those sensitivities. [REDACTED]

MAS: Can you send us an email with that interpretation?

JB: Absolutely, and you want this from OGC and not the program?

EBW: Yes, that would be helpful. We can pass your materials to our Counsel. All of our products undergo a legal sufficiency review. Maybe we can facilitate a meeting between both Counsels offices.

PG: Dana, can you point out where we have said that? ([REDACTED])

DT: I have to see OCG's E-mail and get Sam's comments and interpret them. There were minor technical things and on your response back.

EBW: The Disposition Document?

DT: Yes, see page 3. we agree on "unprecedented"

(EBW explained the color-coding below and said that only yellow highlighted entries would be in our final report.)

Document sent 7/12/2012 see WP E.011.01 [REDACTED]

Our team met at 10:00 AM/MT on Tuesday, July 5, 2011, and subsequently through July 12, 2011 (actually, through after the meeting described above, so subsequent to 7/21/11), to discuss our disposition on EPA's response. **Blue font below summarizes our team disposition, and yellow highlighting denotes changes we made to the final report based on OSWER's response.**

MEMORANDUM

SUBJECT: Environmental Protection Agency's (EPA) Response to OIG's Draft Report: "*Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill* ," Project No. OA-FY10-0221

FROM Mathy Stanislaus
Assistant Administrator

TO: Melissa M. Heist
Assistant Inspector General for Audit

We appreciate the opportunity to comment on the Office of Inspector General (OIG) draft audit report: "*Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill*" (Project No. OA-FY10-0221), dated May 24, 2011.

The Deepwater Horizon (DWH) Oil Spill was an unprecedented event requiring an extraordinary response. Throughout the course of the spill and for a time following the capping of the well, EPA collected, analyzed and posted data on the Agency's website for over 5,000 air, waste, sediment, and water samples; developed and implemented policies associated with the unanticipated use of dispersants necessitated by this event; conducted scientific testing in expedient timeframes; and demonstrated proactive efforts to improve operations. Although the report recognizes many of the Agency's accomplishments and we generally agree with the recommendations, there are portions requiring clarification, and we modified the fifth and seventh recommendations.

The report does not accurately delineate the roles of EPA and the U.S. Coast Guard (USCG) in

the DWH response. Under the National Contingency Plan (NCP), the USCG is the lead agency in response to **coastal** oil spills. EPA is the lead agency in response to inland oil spills. In this event, EPA supported the USCG and worked with federal partners to ensure timely and responsible decisions. In this regard, the statement that "EPA was not prepared for quantity and duration of dispersant use" (pp 11 and 13) should be clarified to avoid the implication that the support EPA provided to the USCG was inadequate. EPA acknowledges that the quantity and duration of dispersant use were unprecedented during the DWH Spill of National Significance (SONS) event.

EPA mobilized quickly and efficiently in support of the federal spill response. Numerous activities demonstrate EPA's contributions, including deployment of personnel and equipment into the field, enhanced monitoring activities, daily public data posting, collaboration and cooperation with federal partners, involvement and expertise of EPA's research community to support decision making with sound science, development of waste management strategies and incorporation of environmental justice concerns into any and all decision-making. Throughout the course of the spill, EPA conducted this work at the highest level of scientific integrity, while adapting and responding rapidly to ever-changing conditions and challenges of a crisis.

Our specific comments (provided in the Attachment) address concerns that require attention and consideration. Should you have any questions, please contact Dana Tulis in the Office of Emergency Management at (202) 564-8600. We appreciate your efforts and your incorporation of our comments as you develop the final report.

This transmittal covers responses to recommendations regarding OSWER. Assistant Administrator Paul Anastas has indicated that he will respond separately regarding recommendations applicable to ORD.

Attachment

cc: Paul Anastas

ATTACHMENT

Specific comments are detailed below by section and chapter:

"At a Glance"

1. *"... EPA did not proceed with rulemaking before the Deepwater Horizon oil spill occurred because of competing priorities and changes in management. If EPA had updated Subpart J, more reliable efficacy data could have been readily available during the oil spill. "* Although this is true, only three of the eight dispersant products tested by EPA for effectiveness using the preferred Baffled Flask Test would pass proposed efficacy criteria. One of the three is the dispersant used in the spill. Consequently, even with this additional information, the dispersant used in this spill would likely not have changed. Separately, the lessons learned from DWH have informed an on-going examination of Subpart J.

OIG Disposition:

We agree with OSWER's comment and noted that the dispersant used in the spill would likely not have changed if the Baffled Flask Test data was available. We noted this in the report body instead of in the At a Glance; specifically, we included the following text in the "Agency Comments and OIG Evaluation" after the "Recommendations" section of Chapter 2:

OSWER said that, even with the additional information provided by the BFT, the dispersant used in the Deepwater Horizon oil spill would likely not have changed, and that lessons learned from the spill have informed an ongoing examination of Subpart J. While this may have been the case, we maintain – as OSWER did in earlier discussions with our team – that more reliable data would have been more readily available had OSWER proceeded with its plan to update Subpart J prior to the spill. We revised our report text as appropriate based on OSWER's response.

2. *"EPA increased its involvement because (a) it was not prepared for the amount of the dispersant use, and (b) additional clarity was needed on roles and responsibilities in responding to a Spill of National Significance. EPA's increased involvement created confusion as to who at EPA led response efforts for dispersant use. "* EPA increased its involvement not because it wasn't prepared for the amount of dispersant use but because the amount of dispersant use was unprecedented. EPA has decision-making authority under Subpart J of the NCP. The EPA representative to the Regional Response Team (RRT) must concur on any pre-authorization for the use of chemical agents (such as dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill agents) for any oil spill. The EPA representative to the RRT must also concur on the use of chemical agents for spill situations not addressed by pre-authorization plans. During the Deepwater Horizon spill, EPA was consulted and responded in an expeditious manner.

OIG Disposition:

We agree with OSWER that the amount of dispersant use was unprecedented, and we changed our final report text to acknowledge this. We included the word "unprecedented" in the 2nd paragraph of the At A Glance under What We Found:

EPA increased its involvement because (a) it was not prepared for the unprecedented amount of the dispersant use, and (b) additional clarity was needed on roles and responsibilities in responding to a Spill of National Significance.

We maintain that EPA was not prepared for the amount and length of dispersant use during the Deepwater Horizon oil spill. In saying this, we are not implying that EPA's response efforts were inadequate. Instead, we believe that actions could have been taken prior to the spill to better prepare for such an event. We also agree that the representative to the RRT must concur on the use of chemical agents for spill situations not addressed by pre-authorization plans. However, EPA senior Agency officials and NRT members were also involved in daily dispersant decisions rather than only concurrence from the

RRT representative.

Note 1 – Response to “At a Glance” Comment 2

We agree with OSWER that the amount of dispersant use was unprecedented, and we changed our report text to acknowledge this. Nevertheless, we maintain that there are actions EPA could have taken to be better prepared for the Deepwater Horizon oil spill, such as applying lessons learned from past exercises and major events and other actions we describe in Chapter 3 of our report. In saying this, we are not implying that EPA’s response efforts were inadequate. We agree that the representative to the RRT must concur on the use of chemical agents for spill situations not addressed by pre-authorization plans. [REDACTED]

DT: [REDACTED]

Chapter 1

Comment:

Barry Breen emailed Melissa the following suggestion on 07/01/11:

Hi, Melissa. Yesterday we sent you our comments on the draft report on Deepwater Horizon, dispersants, and the NCP. One of our comments, included in the attachment, related to Chapter 1 page 2. To supplement on that technical point, we thought the following additional explanation might also be of help, and so we wanted to offer it to you.

For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in communicating with affected parties and the public and coordinating federal, state, local, and international resources at the national level. For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level.

Barry Breen

1. Page 2, “*For a Spill of National Significance, Subpart D of the NCP states that USCG [United States Coast Guard] and EPA can name a National Incident Commander to assume the role of OSC for spills occurring in coastal and inland zones, respectively.*” The statement does not fully reflect 40CFR300.323. The USCG appoints the FOSC in the coastal zone and EPA in the inland zone. The “National Incident Commander” title is used in 40CFR300.323 only for the coastal zone.

OIG Disposition:

We agree and changed our final report text to clarify this point; specifically, we made the following changes to the NCP section of our Background text in Chapter 1:

The NCP designates the USCG as the lead response agency and appoints the OSC for spills within or threatening coastal zones, whereas EPA leads and appoints the OSC for response to spills that occur in inland zones. For a Spill of National Significance in the coastal zone, ~~Subpart D of the NCP states that USCG and EPA can name a National Incident Commander to assume the role of OSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level for spills occurring in coastal and inland zones, respectively.~~ ~~Subpart D~~ For a Spill of National Significance in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC. The NCP ~~also~~ says coordination will involve, as appropriate, the NRT, RRTs, governors of affected states, and mayors or other chief executives of local governments.

2. Page 4, “*The spill lasted 87 days and spilled an estimated 4.9 million barrels of oil, making it the largest marine oil spill in U.S. history.*” OIG should note that investigation into the number of barrels spilled is ongoing.

OIG Disposition:

We agree and noted this in our final report. We added a footnote to the Deepwater Horizon Oil Spill section of Chapter 1 as follows:

The spill lasted 87 days and spilled an estimated 4.9 million barrels¹ of oil, making it the largest marine oil spill in U.S. history.

FN1: In its response to our draft report, OSWER indicated that there is an ongoing investigation into the number of barrels spilled.

Chapter 2

1. Page 1, “*The BFT [Baffled Flask Test] has proved more reproducible, and if EPA had updated Subpart J to include it as the standard testing protocol, more reliable efficacy data would have been readily available at the time of the Deepwater Horizon oil spill.*” As noted above, it is true more reliable efficacy data would have been available at the time of the spill. But test results shows that this data may not have made any difference in the dispersant used.

OIG Disposition:

We understand and agree that the dispersant used in the spill response may not have changed based on the Baffled Flask Test data and we added text in the final report to reflect this point. We made the following changes in the “Agency Comments and OIG Evaluation” part of Chapter 2:

OSWER said that, even with the additional information provided by the BFT, the dispersant used in the Deepwater Horizon oil spill would likely not have changed, and that lessons learned from the spill have informed an ongoing examination of Subpart J.

2. Table 2, “*Dispersant Efficacy Ranking Using SFT [Swirling Flask Test] and BFT [Baffled Flask Test]*” may be misleading. The efficacy test data in Column 1 is an average of two oils using the SFT while the data in Columns 2 and 3 is for only one oil using the BFT. The underlying data confirms that the dispersant used compares well with all those available at the time of the spill.

OIG Disposition:

We agree and added text below the table. The “Source” statement below Table 2 now reads:

Source: OIG analysis of NCP Technical Notebook SFT results and ORD’s report. There were differences in testing protocol between the SFT conducted for the schedule and this study; therefore, we limited comparability of information to ranking efficacy test results. Column 1 is an average of two oils using the SFT whereas columns 2 and 3 are for one oil using the BFT.

Chapter 3

1. Page 1, “*We found that responders to the Deepwater Horizon oil spill could have used other dispersants in the response, but not within the window of time afforded by Addendum 2 to the pertinent Joint Directive. Further, we found that EPA increased its involvement in the Deepwater Horizon oil spill response beyond the role envisioned for the Agency in the NCP for deep water spills, due primarily to USCG’s request given concerns surrounding the use of dispersants and subsea application .*” Choice of dispersants was initially vested in the USCG FOSC. In exercising its concurrence via the Joint Directive, EPA reviewed available information and required additional toxicity testing. EPA increased its involvement given the concerns surrounding the use of dispersants but its role was entirely consistent with the NCP. Prior to the Deepwater Horizon oil spill the US had never used dispersant subsea or in such quantities. Finally, as noted above, the EPA representative to the RRT must concur on any pre-authorization for the use of chemical agents on any oil spill or on the use of chemical agents for spill situations not addressed by pre-authorization plans.

OIG Disposition:

We changed the Chapter 3 charge paragraph to read:

[REDACTED] due primarily to USCG's request given concerns surrounding the use of dispersants and subsea application.

Although we agree that the EPA representative to the RRT must concur on dispersant use not addressed by pre-authorization plans, the concurrence role put in place for aerial application of dispersants included other senior Agency officials and RRT members. Furthermore, the EPA representative to the RRT stated that he did not have the authority to make decisions. [REDACTED]

We included the following in Appendix E of our final report:

Note 1 – Response to Chapter 3 Comment 1

We changed our final report to read, “While EPA’s Administrator maintains delegated authority, we found that EPA increased its involvement in the spill response beyond the RRT concurrence role specified for the Agency in the NCP for deepwater spills. This was primarily due to USCG’s request given concerns surrounding the use of dispersants and subsea application.” We understand that EPA felt it necessary to structure this concurrence process in light of the unprecedented nature of the spill; however, the EPA representative to the RRT stated that they did not have the authority to make decisions. Applying lessons learned from this response would help clarify roles and responsibilities of senior Agency officials alongside those of responders identified in the NCP (e.g., RRT representatives).

DT: Page 6 notes EPA increased involvement, further EPA rep goes on to say that they did not have authority to make decisions. Is the Yellow version in Note 2 the final draft?

EBW: Yes, but we keep your notes to maintain integrity. We feel that we acknowledged your position..

2. Page 11, *‘EPA was not prepared for the amount and length of dispersant use.’* The magnitudes of oil spilled and dispersant used were unprecedented. However, this should not imply that EPA’s support was inadequate.

OIG Disposition:

Throughout our report, we did not intend to imply that EPA’s support to USCG in the response was inadequate by any means. We simply say that EPA was not prepared for the amount and length of dispersant use. We do not believe that we are in a place to judge the adequacy of EPA’s response. We added the word “unprecedented” the bullets in the Chapter 3 charge paragraph and to the sub-caption in Chapter 3 as follows:

We identified two main reasons why EPA increased its involvement during the spill:

- EPA was not prepared for the unprecedented amount, and length of dispersant use.
- EPA and others needed additional clarity on roles and responsibilities for a response to a Spill of National Significance.

EPA Was Not Prepared for Unprecedented Quantity and Duration of Dispersant Use

3. Page 12, “Three of the five dispersant manufacturers contacted believed they wasted their time in responding to various requests for information, that responders never really considered their products, and that responders did not capture their production capabilities.” EPA is sympathetic with the manufacturer’s concerns. At the same time, as noted above, USCG had the lead for dispersant choice. EPA worked during the spill to be as transparent and open as possible regarding the situation with manufacturers under unusual circumstances and the challenges associated with potentially interrupting the spill response to change products along with whether sufficient quantity could be provided. EPA was not able to obtain consistent information regarding production capacities from some of the manufacturers.

OIG Disposition:

We agree and acknowledge this in the final report. We made the following change to Chapter 3:

Three of the five dispersant manufacturers contacted believed they wasted their time in responding to various requests for information, that responders never really considered their products, and that responders did not capture their production capabilities. OSWER said it was not able to obtain consistent information on production capacities from some manufacturers, and that the Agency worked during the spill to be as transparent and open as possible with manufacturers.

4. Page 13, “Improved contingency planning using available information could have better prepared EPA to support USCG’s response to the spill.” As previously stated, the Deepwater Horizon Oil Spill was an unprecedented event. However, this should not imply that EPA’s support to the USCG was inadequate.

OIG Disposition:

We did not intend to imply that EPA’s support to USCG was inadequate. We added the word “unprecedented” to our report (e.g. At a Glance, Chapter 3 charge, Chapter 3 sub-caption).

5. Page 14, “Lessons learned from Spill of National Significance exercises in 2002 stating

that pre-authorization plans should address potential shortfalls of dispersant supplies and equipment. Hurricanes Katrina and Rita in 2004 and 2005, which collectively destroyed 113 oil platforms, 70 vessels, and nearly 130 oil and natural gas pipelines, and ravaged the Gulf Coast with major impacts to offshore infrastructure and operations. ” These statements need clarification. They seem to suggest that dispersants were involved in the exercises and hurricane responses from which EPA could have learned and been better prepared. This is not the case. Although it is true pre-authorization plans should address shortfalls of dispersant supplies and equipment, the exercises and hurricanes did not involve or contemplate the use of dispersants to the extent as in the BP Spill. Note that EPA and USCG did update the area contingency plan (ACP) in spring of 2010. This update was completed in the spring of 2010 despite the responses to Hurricanes Katrina, Rita, Gustav, and Ike.

OIG Disposition:

We added text to clarify these statements. We meant for the three bulleted examples to demonstrate events that should trigger updates to contingency plans, regardless of whether dispersants were used or not. First, we agree with OSWER that dispersants were not used in the Gulf of Mexico SONS exercise in 2002, but the lessons learned document from that exercise considered the use of dispersants a national issue and assigned EPA and USCG to address the shortfalls of dispersants. Additionally, Hurricanes Katrina and Rita caused a great deal of damage in the Gulf of Mexico related to oil spills, yet the deepwater contingency plans were not updated to reflect upon the simultaneous events and extensive damage that they caused.

We made the following changes to Chapter 3:

Plans were not updated to address the following events:

- A dramatic expansion of deepwater drilling in the Gulf of Mexico. Oil production in the Gulf grew from 275 million barrels in 1990, where 4.4 percent came from deepwater wells, to 567 million barrels in 2009, where deepwater wells yielded more than 80 percent of the total. In addition, from 2001 to 2004, 11 major oil fields were discovered in water depths of 7,000 feet or more. Figure 2 shows the increase in water depth of wells drilled in the Gulf from 1940 to 2010.
- Lessons learned from Gulf of Mexico Spill of National Significance exercises in 2002 stating that pre-authorization plans should address potential shortfalls of dispersant supplies and equipment. The lessons learned document assigned EPA and USCG as the steward agencies, yet plans were not updated to address dispersant shortfalls. OSWER said that dispersants were not used in this exercise but agreed that pre-authorization plans should address shortfalls of dispersant supplies and equipment.
- Hurricanes Katrina and Rita in 2004 and 2005, which collectively destroyed 113 oil platforms, 70 vessels, and nearly 130 oil and natural gas pipelines, and ravaged the Gulf Coast with major impacts to offshore infrastructure and operations. An EPA Region 6 Division Director said

contingency plans for inland zones were updated to address this event, but plans for deepwater could have been updated to reflect the volume of oil spilled and the short interval of time between the two storms.

We also included the following in Appendix E of our final report:

Note 2 – Response to Chapter 3 Comment 5

We added text to clarify these statements. Our three bulleted examples meant to demonstrate events that should trigger updates to contingency plans, regardless of whether or not dispersants were used. We agree with OSWER that dispersants were not used in the 2002 Gulf of Mexico SONS exercise, but the lessons learned document from the exercise considers the use of dispersants a national issue and assigned EPA and USCG to address the shortfalls of dispersants. Additionally, Hurricanes Katrina and Rita caused a great deal of damage in the Gulf of Mexico to oil facilities, yet deepwater contingency plans were not updated to account for simultaneous events and/or the extensive damage that they caused.

6. Page 14, “*The Ixtoc I spill in the Gulf of Mexico in 1979 released 3.3 million barrels of oil and lasted over 10 months. The Region 6 RRT could have used knowledge gained from this spill to update its Regional Integrated Contingency Plan to better address worse-case discharges and spill duration.*” The Ixtoc Oil Spill in 1979 occurred before OPA existed and before the ACP was developed. Thus, its lessons were available before the ACP was drafted and we question the record support for the conclusion that the ACP needed updating to reflect it.

OIG Disposition:

We disagree with OSWER’s comment. In addition to spilling 3.3 million barrels of oil and lasting over 10 months, between 1 and 2.5 million gallons of dispersants were applied in response to the Ixtoc I spill. Regardless of the spill occurring prior to OPA and the ACP, a spill duration of 10 months and this amount of dispersants could have been taken into consideration when developing planning documents.

We made the following changes to Chapter 3:

The Ixtoc I spill in the Gulf of Mexico in 1979 released 3.3 million barrels of oil, lasted over 10 months, and applied between 1 and 2.5 million of mostly Corexit dispersant products. OSWER said lessons from this 1979 spill were available before the Contingency Plan was drafted. However, we found that the Region 6 RRT did not ~~could have used~~ knowledge gained from this spill to update its Regional Integrated Contingency Plan to better address worst-case discharges and spill duration. The Region 6 RRT Regional Integrated Contingency Plan still lists 100,000 gallons as a major discharge in coastal waters and does not address the duration of a spill. In addition, ORD’s Assistant Administrator said ORD would have liked to have more data and insight from the Ixtoc I spill to build into decision making for future spills.

We also included the following in Appendix E of our final report:

Note 3 – Response to Chapter 3 Comment 6

In addition to spilling 3.3 million barrels of oil and lasting over 10 months, between 1 and 2.5 million gallons of dispersants were applied in response to the Ixtoc I spill. Even though this spill occurred prior to OPA and the ACP, the Ixtoc I spill duration and amount of dispersants was not considered when drafting either of these documents. We understand that the Deepwater Horizon oil spill was unprecedented in many ways, yet the historic Ixtoc I spill could have been taken into consideration when developing planning documents.

7. Page 15, “*An EPA Region 6 Division Director said he did not believe EPA could have anticipated a spill of this magnitude. However, more detailed and updated contingency planning using available information could have better prepared EPA and others to respond to the spill. Future planning should consider the Deepwater Horizon scenario and address worst case discharges, lessons learned from Spill of National Significance exercises, and industry trends.*” In context, it seems the Region 6 Division Director was speaking directly to the use of dispersants under the pre-approval plan and the inability of the USCG and the RP to control the release. EPA fulfilled its obligations as a co-chair of the Regional Response Team (RRT), and exercised its concurrence on the use of a dispersant based on the dispersants available. The dispersant pre-approval plan was not anticipated for long-term use, rather pre-approval was developed to assure that the FOSC and/or the RP has appropriate tools for the immediate response to a spill. Because of this, EPA increased its involvement in surface dispersant decisions during the Deepwater Horizon oil spill and instituted procedures to monitor for effects associated with the sub-surface application of dispersants. Region 6 is working within the Region 6 RRT to revisit the conditions associated with dispersant use under the Pre-Authorization Plan.

OIG Disposition:

We agree with OSWER that the pre-approval plan was not anticipated for long-term use, but EPA could have considered the duration of the Ixtoc I spill, where dispersants were used, to better plan for long-term use.

We made the following changes to Chapter 3:

An EPA Region 6 Division Director said he did not believe EPA could have anticipated a spill of this magnitude, and OSWER said that the dispersant pre-approval plan was not anticipated for long-term use. However, more detailed and updated contingency planning using available information could have better prepared EPA and others to respond to the spill.

8. Page 16, “*...the NCP does not provide guidance on the roles and responsibilities of the National Incident Commander and other high-level officials. As a result, involvement by senior EPA officials created confusion as to who made dispersant decisions.*” All

decisions regarding dispersants and involving senior officials were clearly and appropriately vetted thru the National Response Team (NRT) as well as the RRT.

OIG Disposition:

Throughout our fieldwork, we heard from multiple interviewees that involvement by senior EPA officials created confusion as to who made decisions regarding dispersant applications. We are not implying that decisions made were incorrect, but we maintain that additional guidance on roles and responsibilities of high-level officials is necessary, as stated in Recommendation 5.

We made the following changes to Chapter 3:

Key staff in Region 6, including EPA's representative to the Region 6 RRT and staff involved in the response, said they did not have the authority to approve dispersant applications. One described the process as "very political" and said "operational control was taken away from the region." As a result, EPA's additional involvement in daily surface application decisions created confusion as to who in the Agency made decisions. In its response to our draft report, OSWER said that the RRT representative was heavily involved in the decision-making process, and that the decision-making process included RRT and NRT members.

CM: RRT staff replaced by Sam was authorized to approve the use of dispersant. Sam may be concerned how this is worded.

[REDACTED]

DT: [REDACTED] If you want to say something like, "The RRT representative got elevated because of the importance of the issue" that would be fine to us.

CM: It would be fair to say that.

DT: It elevated back to Sam and me from the Administrator to have more of a flow. Yes, there was some confusion because of the scale of the release.

MAS: We have a lot of evidence both in interviews and document reviews on the confusion. We do not have any evidence that this was redelegated.

EBW: Mary Anne is right. What we can do and have tried to do is add your context and explanation, but our evidence is what it is and people said what they said to us.

[REDACTED]

DT: We have no problem with the roles and responsibilities and the confusion piece. [REDACTED]

EBW: We have established and we all agree – as the President’s Commission and our team have said – that there is a need for more clarity on the roles and responsibilities for senior [REDACTED]

PG: So the issue is whether the RRT/NRT is the floor or the ceiling. [REDACTED]

PG: Is the RRT the only one who can make that decision, or someone above that? [REDACTED]

PG: I am trying to think of a workable solution that we could agree upon here. If the wording was that this was not a typical activity, that is, if we looked at typical responses, but because of the atypical [REDACTED]. [REDACTED]

PG: I think the wording we used “beyond the role specified by the NCP” is what you are trying to describe. [REDACTED] Rather we are trying to say that “this is what is specified in the NCP for a typical response, but here is what happened in this response.” [REDACTED]

DT: I do not think these issues are unresolvable, it’s just a matter of wording. The four citations make it clear. The Administrator always has the authority and it is always delegated down, but in these large incidents it goes back up.

[REDACTED]

DT: We will get you that language. The other changes we will get you is to interpret Sam's comments (in his absence since he is on vacation). There is another place on Ixtoc. There is a lot of back and forth on that (cart-horse problem). I may have OGC look at that language. We get into the RRT issue again on page 11 on the confusion. The modification we might make is "some staff" so as to not imply that everyone was confused. So we will give a suggestion there.

9. Page 16 *Under the NCP, for spills occurring in coastal zones, EPA is not given any decision-making authority, but EPA is responsible for planning prior to a spill and supporting the USCG during a response. The NCP states that for a Spill of National Significance in the coastal zone, USCG may name a National Incident Commander who assumes the role of the OSC in communicating with affected parties and coordinating resources at the national level. The NCP further states that coordination will involve the NRT, RRTs, and others as appropriate. However, the NCP does not address how high level officials other than the National Incident Commander can and should participate in such a response.* EPA does have decision-making authority under Subpart J of the NCP. The EPA representative to the RRT must concur on any pre-authorization for the use of chemical agents (such as dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill agents) for any oil spill. The EPA representative to the RRT must also concur on the use of chemical agents for spill situations not addressed by preauthorization plans. Finally, 40CFR300.323(b) addresses the role of EPA senior officials in responding to a Spill of National Significance which provides EPA a concurrence role; 40 CFR 300.323(b) provides that the Administrator may name a senior Agency official to assist in strategic coordination.

OIG Disposition:

We agree with OSWER that the EPA representative to the RRT must concur on the use of dispersants. However, we disagree as to how far this decision-making authority goes. During the Deepwater Horizon oil spill, senior Agency officials became involved in the daily decisions to apply dispersant on the surface. This involvement is beyond the concurrence of the EPA representative to the RRT on dispersant use.

In addition to the immediately preceding change to address OSWER's Chapter 3 Comment 8, we made the following changes to Chapter 3:

The concurrence process in place for surface dispersant application inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator. EPA senior officials believe their involvement in the decision to apply dispersants subsurface reduced the total amount of dispersants applied overall (subsurface and surface). EPA officials also believe subsurface dispersant application was effective. In its response to our draft report, OSWER said that all decisions regarding dispersants and involving senior officials were clearly and appropriately vetted through the NRT and the RRT.

However, as the President's Commission Report noted, due to insufficient guidance on roles and responsibilities for a Spill of National Significance, an additional protocol is needed that accounts for participation by high-level officials. OSWER agrees about ~~that the NCP needs~~ for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

Conclusion

[REDACTED]

EPA did not update plans adequately and was not prepared for a spill of this significance, including the subsea use of dispersants and unprecedented ~~at such large quantities~~ over a long period. EPA's increased involvement in operational decisions created confusion within and outside the Agency. EPA could better respond to future significant spills by enhancing planning efforts to address unknowns encountered in the Deepwater Horizon response and by clarifying roles and responsibilities of senior Agency officials.

[REDACTED]

[REDACTED]

10. Page 16. *"It was unclear in our review what responders based the 15,000-gallon limit upon, but the Addendum sought to limit dispersant use and require more documentation because of concerns about ongoing dispersant applications at such large volumes."* The gallon limit was based on a 75% reduction in the total volume of dispersant used.

DT: I found the document that explains how we got to that 75%.

OIG Disposition:

We added text in our report to address this. We made the following changes to Chapter 3:

On May 26, 2010, EPA and USCG issued Addendum 3 to the Directive and required BP to limit the use of dispersants subsurface to 15,000 gallons per day and eliminate surface application except when granted exemption. It was unclear in our review what scientific basis responders used to set the 15,000-gallon limit. The Addendum sought to limit dispersant use and require more documentation because of concerns about ongoing dispersant applications in such large volumes. Given unknowns on the long-term health and environmental effects of dispersants, EPA wanted to use the least amount possible to

be effective.

11. Page 17, “*Rather than EPA’s involvement occurring through the RRT and NRT as would happen in a typical response under the NCP, senior EPA officials became involved in daily surface dispersant decisions....Key staff in Region 6, including EPA’s representative to the Region 6 RRT and staff involved in the response, said they did not have the authority to approve dispersant applications.*” The text should go on to point out that the RRT representative was heavily involved in the decision-making process, and that the decision-making process included the RRT and the NRT members. Senior Agency officials in Area Command, in consultation with EPA’s representatives in the Incident Command, gave concurrence to the FOSC.

OIG Disposition:

We agree and added text in the report to point out that the RRT representative was involved in decision making (see how we addressed preceding comments #8 and #9 for report changes).

12. Page 17, “*The concurrence process in place for surface dispersants inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator.*” We are unclear on the support in the record that delays occurred or were inherent given the frequent and ready communication within the Agency. Timely decisions were made given the magnitude of dispersant use.

OIG Disposition:

As OSWER noted in Comment 7 under Chapter 3, pre-approval was developed to assure that the FOSC and/or the RP has appropriate tools for immediate response to a spill. We agree with this point and believe that the concurrence process that was developed during the spill response – where senior Agency officials made decisions instead of the RRT representative – inherently created delays. We understand that this was an unprecedented spill, and we do not believe we are in a position to say decisions were made timely or not in every instance. However, we believe that by going up and down the chain of command, instead of the RRT representative being able to make decisions on the spot, was a delay in itself.

We made the following changes to Chapter 3:

The concurrence process in place for surface dispersant application inherently created delays as EPA elevated decisions to the OSWER Assistant Administrator and, at times, to the Administrator. EPA senior officials believe their involvement in the decision to apply dispersants subsurface reduced the total amount of dispersants applied overall (subsurface and surface). EPA officials also believe subsurface dispersant application was effective. In its response to our draft report, OSWER said that all decisions regarding dispersants and involving senior officials were clearly and appropriately vetted through the NRT and the RRT. However, as the President’s Commission Report noted, due to insufficient

guidance on roles and responsibilities for a Spill of National Significance, an additional protocol is needed that accounts for participation by high-level officials. OSWER agrees about ~~that the NCP needs~~ for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

We also included the following in Appendix E of our final report:

Note 4 – Response to Chapter 3 Comment 12

As OSWER noted in its Chapter 3 Comment 7, pre-approval was developed to assure that the FOSC and/or the responsible party has appropriate tools for immediate response to a spill. We agree and note that the concurrence process developed during the response – wherein EPA escalated decisions to senior Agency officials instead of the RRT representative – inherently created delays. We observed some examples where it took several hours for some dispersant application decisions and noted that these decisions could have been more immediate had EPA’s RRT representative been able to make decisions in real time. We understand that this was an unprecedented spill and are not in a position to say decisions were “untimely” given the magnitude of the response. That said, escalating decisions up the command chain inherently creates delays over decisions made instantly by the RRT representative.

DT: In most cases we would say that “delays” were not the case, especially when Mathy was physically there in person.



DT: There is a judgment call here.

13. Page 18, “OSWER agrees that the NCP needs additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance .” The statement needs to be clarified to, “OSWER supports clarification of roles for SONS in NRT guidance. Further evaluation of changes to the NCP is on-going.”

OIG Disposition:

We added text to include this clarification. We made the following changes to Chapter 3:

OSWER agrees about ~~that the NCP needs~~ for additional clarity on the roles and responsibilities of various agencies, as well as coordination and communication, for responding to a Spill of National Significance.

14. Page 18, “EPA increased its involvement in the Deepwater Horizon oil spill over the role

envisioned for the Agency in the NCP for deepwater spills.” EPA increased its involvement because the amount of dispersant used and the way in which it was applied (subsea) was unprecedented. [REDACTED]

OIG Disposition:

[REDACTED] We agree that EPA increased its involvement due to the amount of dispersant used and the way in which it was applied, and we added the word “unprecedented” throughout our report. [REDACTED]

We noted the following in our “Agency Comments and OIG Evaluation” section in Chapter 3:

In its response to our draft report, OSWER generally agreed with our recommendations; however, OSWER has not yet submitted a corrective action plan to address our recommendations. OSWER’s response included comments and concerns on our Chapter 3 report text, most notably on the unprecedented nature of the Deepwater Horizon oil spill. We agree with OSWER on the magnitude of the spill, and we did not intend to imply that EPA’s support to USCG was inadequate or that decisions were inappropriate. We believe that our findings and corresponding recommendations align with the fact that this event was unprecedented, and that EPA should take action to address lessons learned.

DT: This language is okay for the most part, but you might want to add, “However, the Agency was acting within the NCP.”

Recommendations

As stated earlier, EPA generally agrees with most of OIG’s recommendations. Work is already under way to address most of the recommendations. However, EPA needs to modify recommendation 5 and 7, as noted below, to agree with these recommendations as well.

For recommendation 5, EPA has developed training on roles and responsibilities for large scale events. The NRT is also addressing lessons learned. As such, we propose revising recommendation 5 to state, “*Develop training for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the response and work with federal partners to address lessons learned.*”

For recommendation 7, we want to clarify that the proposed rule may ask for

comment on the manufacturer being responsible for tracking production capacities since this would not be an EPA responsibility.

DT: Some of this I can see we misinterpreted the yellow/blue. But, overall, the concern is the authority piece. I would never disagree that there needs to be more clarity on roles and responsibilities.

EBW: When can we expect to receive you comments?

DT: I can definitely get it you by Monday morning or the end of today if I can. We can get you the OGC language very soon.

EBW: Not to sound whiny, but it would have been nice to have this dialogue when we got the first response. It seems your position has become more vehement since you saw our internal disposition document.

DT: I agree. There are two ways to handle this. We could revise the formal response we sent or we can somehow depict it some other way. (After a brief discussion, we all agreed that there was no need to completely revise the initial response. We also noted that our “Agency Comments and OIG Evaluation” section would describe these discussions/back-and-forth with the Agency on the authority piece.)

PG: Just send another version of the response that address the point you made on Barry’s email to Melissa.

DT: We do appreciate the willingness and openness to have these discussions.

PG: When will you get us the response with the “tweak”?

DT: I can send that now.

PG: If you could, please get us the disposition comments by COB Monday, July 25.

Team Debrief:

Non-Responsive



Non-Responsive



5. Develop guidance and training for a Spill of National Significance that clarifies roles and responsibilities for high-level Agency officials. Review this response and the NCP and work with federal partners to address lessons learned and include detail on how to respond to a Spill of National Significance.

Previously it was:

Develop guidance for a Spill of National Significance event that clarifies roles and responsibilities for high-level agency officials. Review the NCP and work with federal partners to develop guidance or standard operating procedures to include more detail on how to respond to a Spill of National Significance.

Non-responsive



7. As part of the action to review NCP Subpart J requirements, address the

need to capture and maintain dispersant manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.

Previously it was:

7. As part of the action to review NCP Subpart J requirements, capture and maintain dispersant manufacturer production capacities, equipment requirements, and other necessary information to better prepare for future oil spills. Make this information widely available to the response community.

Status: Approved
Current Editor List:

Level 1 approval:

Level 2 approval: Approved

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[REDACTED] (b) (5) [REDACTED]

[REDACTED]

Thank you and look forward to your response.

Dana S. Tulis
Acting Office Director
Office of Emergency Management
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Resending to include Mary Kay...

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Date: 07/21/2011 03:49 PM
Subject: OGC comments on OIG Draft Report: Revisions Needed to [NCP] Based on [DWH] Oil Spill"

Dana and Craig,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While 40 CFR 300.910 discusses the concurrence role for authorization of dispersant use associated with the EPA RRT representative, that concurrence authority is not exclusive and does not prohibit the involvement of senior management. The authority, jurisdiction, and implementation provisions in the NCP flow from Section 311 of the Clean Water Act and are reflected in Executive Order 12777. All authorities under CWA 311 are delegated either directly to the Administrator by Congress, or by Executive Order 12777 from the President to the Administrator. While the Administrator's authority may be further delegated through senior management on down to the RRT representative, the Administrator and other delegates retain the authority to act. The mere delegation of authority does not prohibit the delegator from exercising said authority.

Please let me know if you have any further questions or concerns.

Thanks,
Jim

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